Human Rights, Religious Freedom and Faces of Faith

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Göran Gunner, Pamela Slotte, Elizabeta Kitanović (Editors)

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ABBREVIATIONS

ACHPR	African Charter on Human and Peoples Rights
ACN	Aid to the Church in Need
CEC	Conference of European Churches
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPT	Committee for the Prevention of Torture
CRC	Convention on the Rights of the Child
CRPD	Convention of the Rights of Persons with Disabilities
CSW	Christian Solidarity Worldwide
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOC	Economic and Social Council
ECtHR	European Court of Human Rights
EPR	European Prison Rules
EU	European Union
FoRB	Freedom of Religion or Belief
ICCPR	International Covenant on Civil and Political Rights
ICESC	International Covenant on Economic, Social and Cultural Rights
ICPD	International Conference on Population and Development
ILO	International Labour Organization
IYDP	International Year of Disabled Persons
LGBT	Lesbian, gay, bisexual, and transgender
LLSRC	Law on the Legal Position of Religious Communities (Montenegro)
MR	Mandela Rules

NCM	The National Commission for Minorities (India)
NGO	Non-governmental organization
NRHC	The National Human Rights Commission (India)
OAS	Organization of American States
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	UN Declaration of the Rights of Indigenous Peoples
UNPFII	United Nations Permanent Forum on Indigenous Issues
UPR	UN Universal Periodic Review
WCC	World Council of Churches

PART I

RELIGIOUS FREEDOM AND FACES OF FAITH

INTRODUCTION

HUMAN RIGHTS, FREEDOM OF RELIGION OR BELIEF, AND THE CHURCH

Göran Gunner, Pamela Slotte and Elizabeta Kitanović

Introduction

The Conference of European Churches (CEC) has a long-standing record of promoting human rights.[1] A milestone was the 2012 publishing of the human rights manual *European Churches Engaging in Human Rights*.[2] A special working group on human rights and freedom of religion or belief has been set up. Several seminars and consultations have taken place in order to highlight human rights and freedom of religion or belief including "Religious freedom and cultural heritage in Cyprus: Working for unity in a divided land" (2015), "Advancing Freedom of Religion or Belief for

[1] For details see Rüdiger Noll and Elizabeta Kitanović, "Preface" in *European churches engaging in human rights*, edited by Elizabeta Kitanović. Bruxelles: Church and Society Commission of CEC 2012, 5-7.

[2] See http://www.ceceurope.org/human-rights/education/ [accessed 15 Dec. 2017].

All"[3] (2015), "Consultation on Religious Minorities as Part of Culturally Diverse Societies" (2016), and "Protection of Holy Sites and Worship Places in Europe and the Middle East in Cyprus" (2017) and "Towards Peaceful Coexistence in the Middle East: Challenges and Opportunities" (2018). Of special importance has been the establishment of the Summer School on Human Rights with a different focus each year: "Churches' Voice on Human Rights – Training on Social, Economic and Cultural Rights in the Euromediterranean Region" (2013), "Advancing Freedom of Religion or Belief for All" (2014), "Churches address anti-discrimination" (2015), "Stand Up for Women and Children's Rights" (2016) and "Rights under Threats – Stand Up for Refugees' and Migrants' Rights" (2017). The Summer School 2018 dealt specifically with "Freedom of Religion or Belief and Populism".

The present manual – *Human Rights, Religious Freedom and Faces of Faith* – is part of the ongoing work done by CEC Member Churches to advocate for the promotion and protection of human rights at the highest standards inside Europe and beyond its borders. The manual has been divided into four parts that each cover specific aspects of human rights and freedom of religion or belief.

PART I relates closely to issues connected to freedom of religion or belief and consists of two sections. The first section – this introduction – takes into consideration *Human Rights, Freedom of Religion or Belief, and the Church*. It includes a basic introduction to freedom of religion or belief in the European setting, both through mechanisms within the Council of Europe and the European Union. The second section – *The Rights of the Religious Minorities* – deals with the specific situation facing several of the CEC member-churches as well as other religious denominations and groups, namely the minority position vis-à-vis a majority religion or Christian denomination in the country.

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[3] See http://www.globethics.net/documents/4289936/17575651/GE_CEC_3_web.pdf/5747ccc9-6362-4721-82c3-b616382a5d29 [accessed 15 Dec. 2017].

PART II offers examples of the situation with regard to freedom of religion or belief inside Europe. Nine countries have been chosen from different geographical parts of Europe and selected also in order to give examples from different minority-majority religious settings: Great Britain and Norway with traditionally Anglican and Lutheran majorities; France and Italy with traditionally Catholic majority; Montenegro, Belarus and Cyprus with traditionally Orthodox Christian majorities, Turkey with a Muslim majority and Estonia where a minority of the population considers themselves to adhere to any creed.

PART III, in turn, provides some examples of the situation with regard to freedom of religion or belief outside of Europe. Six countries have been selected. Two are from Africa – Egypt and Nigeria – while four are from Asia – India, Iraq, Pakistan and Syria.

Finally, in PART IV the manual highlights four different issues putting human rights in focus: *The Rights of Women*, *The Rights of Prisoners*, *The Rights of Persons with Disabilities* and *The Rights of Indigenous People*.

History of Freedom of Religion or Belief

The history of human rights has been the topic of extensive research during the last decade. The purpose of this newer historiography has been to revisit, and also in part challenge, common perceptions and portrayals of what the history of human rights is all about.[4] Needless to say that upon

[4] See, e.g., Stefan-Ludwig Hoffmann (ed.), *Human Rights in the Twentieth Century*. New York: Cambridge University Press, 2010; Samuel Moyn, *The Last Utopia: Human Rights in History*. Cambridge, MA: Harvard University Press, 2010; Akira Iriye, Petra Goedde & William I. Hitchcock (eds.), *The Human Rights Revolution: An International History*. Oxford: Oxford University Press, 2012; Pamela Slotte & Miia Halme-Tuomisaari (eds.), *Revisiting the Origins of Human Right*s. Cambridge: Cambridge University Press, 2015; Steven L. B. Jensen, *The Making of International Human Rights: The 1960s, Decolonization, and the*

closer inspection this history turns out to be multifaceted and it is by no means a simple unilinear success story of increased comprehensive protection of human rights all over the world, including by and within the churches.

The same is the case if we look more closely at the history of the freedom of religion or belief.[5] Ideas of some form of freedom in matters of faith – for individuals and especially for communities – can be found throughout much of history. Concepts such as human dignity, natural rights, conscience and tolerance have played a role here. However, these ideas of individual and collective freedom in matters of faith, and which frequently have been inspired by religious, theological and philosophical convictions, have not been uniform. They have taken different forms and often enough in practice led to protection of some persons and groups rather than other persons and groups. Citizenship, race, abilities and faculties, gender and other statuses, positions or capacities, have played a role when protection including in matters of faith has been afforded or not afforded to a person or group. Protection has not been all-encompassing, and as we will see in this volume is not so even today.

Reconstruction of Global Values. Cambridge: Cambridge University Press, 2016; Samuel Moyn, *Not Enough: Human Rights in an Unequal World.* Cambridge, MA: Harvard University Press, 2018. See also for comparison, for example, the slightly earlier contribution by Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (Philadelphia, PA: University of Pennsylvania Press, 1998), as well as Micheline Ishay, *The History of Human Rights* (Berkeley, CA: University of California Press, 2008).

[5] See, e.g., Malcolm D. Evans, *Religious Liberty and International Law in Europe.* Cambridge: Cambridge University Press, 1997; Samuel Moyn, *Christian Human Rights*. Philadelphia, PA: University of Pennsylvania Press, 2015; Anna Su, *Exporting Freedom: Religious Liberty and American* Power. Cambridge, MA: Harvard University Press, 2016; Linde Lindkvist, *Religious Freedom and the Universal Declaration of Human Rights*. Cambridge: Cambridge University Press, 2017.

Turning to recent history, the protections of collective religious freedom that were included in the minority treaties drafted under the auspicies of the League of Nations during the first half of the 20th century in the aftermath of World War I are typically acknowledged as milestones of sorts at the level of modern international law. However, the regime was ultimately unsuccessful, and subsequently by the mid-20th century succeeded by the United Nations with its own protective framework for human rights, including freedom of religion or belief. This is a framework which holds importance still today, alongside various regional human rights regimes.

Forms of Codification

Freedom of religion or belief currently enjoys legal protection at both national and international levels. Turning to the most important regional and global human rights treaties, we find they all include provisions on the protection of freedom of religion or belief, not the least of which is Article 18 of the Universal Declaration of Human Rights (UDHR, 1948):

> Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

As a result of the work of the United Nations in translating the rights declared in the UDHR into legally binding human rights treaties, Article 18 of the International Covenant on Civil and Political Rights (ICCPR, 1966) states that:

> 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or

> in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
>
> 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
>
> 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
>
> 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions. respect the exclusive character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 27 of the ICCPR, in turn, provides that:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The treaty body Human Rights Committee publishes its interpretation of the provisions of the treaty in the form of "general comments". Article 18 is dealt with in General Comment 22 – "The right to freedom of thought, conscience and religion". Here is stated that the concepts religion and belief are to be broadly construed including protection of "theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief". It is also concluded that the manifestation of religion in

worship, observance, practice and teaching encompasses a broad range of acts:

> including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or headcoverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as, inter alia, the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.[6]

In 1981 the UN General Assembly adopted a resolution – The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Articles 2 through 4 deal with discrimination based on religion or belief, Article 5 with the parents/ legal guardians and the child, and Article 6 with manifestations of religion.[7]

One more UN document needs to be mentioned – The Convention on the Rights of the Child (CRC), adopted by the UN General Assembly 1989. Article 14 declares:

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[6] For the entire text of the General Comment 22, see "Human Rights Bodies". https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11 [accessed 15 Dec. 2017].

[7] "General Assembly". https://www.un.org/documents/ga/res/36/a36r055.htm [accessed 15 Dec. 2017].

> 1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
>
> 2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
>
> 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.[8]

Furthermore, Article 27 recognises "the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development" but without a definition of "spiritual".

Looking towards the regional level, Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 1950) provides that:

> 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the

[8] *Convention on the Rights of the Child*. https://www.ohchr.org/en/professionalinterest/pages/crc.aspx [accessed 15 Dec. 2017].

> protection of public order, health or morals, or the protection of the rights and freedoms of others.[9]

The European Court of Human Rights (ECtHR) has jurisdiction to hear allegations of violations of the ECHR.[10] The applications may be individual or inter-State. A European case law has developed based on the court decisions.[11]

In the EU, freedom of thought, conscience and religion is protected by the ECHR, Article 9 and is also stated in the European Charter of Fundamental Rights, Article 10.[12] Judgments and orders from the European Court of Justice have also developed a case law.[13] In 2013, the EU adopted special guidelines on the promotion and protection of freedom of religion or belief. Four basic overriding principles of action are mentioned:[14]

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[9] For the history of the European human rights system and the ECHR, see, e.g., A. W. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention.* Oxford: Oxford University Press, 2004; Marco Duranti, *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention*. Oxford: Oxford University Press, 2017.

[10] "European Convention on Human Rights". https://www.echr.coe.int/ [accessed 10 Jan. 2019].

[11] For case law based on the European Court of Justice, see "HUDOC". https://hudoc.echr.coe.int/eng [accessed 10 Jan. 2019] and "Guide on Article 9 of the European Convention on Human Rights" https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf [accessed 10 Feb. 2019].

[12] "EU Charter of Fundamental Rights". https://fra.europa.eu/en/charterpedia/article/10-freedom-thought-conscience-and-religion [accessed 10 Jan. 2019].

[13] For EU case law, see "Case law". https://eur-lex.europa.eu/collection/eu-law/eu-case-law.html [accessed 10 Jan. 2019].

[14] "EU Guidelines on the promotion and protection of freedom of religion or belief". https://eeas.europa.eu/sites/eeas/files/137585.pdf [accessed 10 Jan. 2019].

> 1. Universal character of freedom of religion or belief.
>
> 2. Freedom of religion or belief is an individual right which can be exercised in community with others.
>
> 3. Primary role of States in ensuring freedom of religion or belief.
>
> 4. Connection with the defence of other human rights and with other EU guidelines on human rights.[15]

The Organization for Security and Co-operation in Europe (OSCE) also work on assisting participating States, religious or belief communities and civil society in protecting and promoting the right to freedom of religion or belief. This is specially done through OSCE Office for Democratic Institutions and Human Rights (ODIHR). Among the useful material presented are *Guidelines for Review of Legislation Pertaining to Religion or Belief* (2004), *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools* (2007) and *Guidelines on the Legal Personality of Religious or Belief Communities* (2015).[16]

The African Charter on Human and Peoples' Rights (1981), in turn, proclaims in Article 8 that:

> Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

The Organization of American States (OAS) states in the American Declaration of the Rights and Duties of Man:

> Every person has the right freely to profess a religious faith and to manifest and practice it both in public and in private (Article III).

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[15] "EU Guidelines on the promotion and protection of freedom of religion or belief", ibid.

[16] "Freedom of religion or belief". https://www.osce.org/odihr/freedom-of-religion-or-belief [accessed 10 Jan. 2019].

> Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union, or other nature (Article XXII).

Article 12 on the Freedom of Conscience and Religion of the OAS American Convention on Human Rights is also important:

> 1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.
>
> 2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
>
> 3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.
>
> 4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

Finally, the Special Rapporteur on freedom of religion or belief is appointed by the UN Human Rights Council as an independent expert. The Rapporteur's mandate includes "to identify existing and emerging obstacles to the enjoyment of the right to freedom of religion or belief" and "to promote the adoption of measures at the national, regional and international levels to ensure the promotion and protection of the right".[17]

[17] "Special Rapporteur on freedom of religion or belief". https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FreedomReligionIndex.aspx [accessed 15 Dec. 2017].

Legal Dogmatics

As the overview of key parts of the international and regional human rights framework shows, the right to freedom of religion or belief encompasses both a right to believe and a right not to believe, a right to participate in religious worship, observation, practice and teaching, and to abstain from participation in the same. However, not all acts that are inspired, motivated or influenced by belief constitutes a manifestation of it for purposes of legal protection. According to the ECtHR, for example, a "manifestation" within the meaning of Article 9 must be intimately connected to religion or belief. The ECtHR decides whether this is the case based on the facts of each individual case.[18]

It is further possible to talk about positive and negative aspects of freedom of religion or belief (FoRB). This is basically not connected to individual aspirations of not seeing any signs of religion in the public sphere, instead it relates to the obligations of the contracting state. On the one hand, the state has a negative duty to refrain from interfering with the rights guaranteed – to respect the rights in question. On the other hand, the state has positive obligations to take active steps to safeguard, promote and protect those rights within its territory, including by seeing to it that other actors respect them.

> The boundaries between the State's positive and negative obligations under the Convention do not lend themselves to precise definition… in both situations – whether the obligations are positive or negative – the State enjoys a certain margin of appreciation…[19]

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[18] For details see: "Overview of the Court's case-law on freedom of religion," Council of Europe/European Court of Human Rights. https://www.echr.coe.int/Documents/Research_report_religion_ENG.pdf [accessed 15 May 2019].

[19] *Mouvement Raëlien Suisse v. Switzerland* (Application no. 16354/06, 13 July 2012), para. 50.

The right to freedom of religion or belief is an individual right but it is clearly also recognised that it is a right that in many important respects is exercised in community with others. So, the right to freedom of religion or belief has both individual and collective aspects. Most of the FoRB-rights, as in the ECHR Article 9, are individual rights but the ECtHR has recognised that an ecclesiastical body may exercise rights on behalf of its members. Furthermore, "the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords".[20] In consequence, religious communities enjoy freedom under Article 9 to decide themselves on matters of doctrine and how to communicate these for example through rituals, and on matters of membership and leadership in the sense of whom they wish to entrust with religious tasks.[21] How far the legal right to freedom of religion or belief as a collective right stretches beyond such 'core' issues is a matter of ongoing discussion and negotations.[22] It is also important to mention in this context that the individual legal right to freedom of religion or belief "does not guarantee any right to dissent within a religious body", but this right can be exercised through leaving the religious community in question.[23]

As can be deduced already from the discussion in this section, as well as from the short glance above at the various Articles enshrining a legal

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[20] "Overview of the Court's case-law on freedom of religion," Council of Europe/European Court of Human Rights. https://www.echr.coe.int/Documents/Research_report_religion_ENG.pdf [accessed 15 May 2019].

[21] See, e.g., *Hasan and Chaush v. Bulgaria* (Application no. 30985/96, 26 Oct. 2000), paras. 60 and 62, and *Fernández Martínez v. Spain* (Application no. 56030/07, 12 June 2014), para. 127.

[22] See, e.g., the various contributions to the Special issue on the Ministerial Exception, *Oxford Journal of Law and Religion* 4:2 (2015), edited by Pamela Slotte and Helge Årsheim.

[23] *Sindicatul "Păstorul cel Bun" v. Romania* (Application no. 2330/09, 9 July 2013), para. 123.

right to freedom of religion or belief at the international level, the rights are *qualified* in various ways. They are situated in the context of a human life lived together with others in a society. This fact also means that to some extent those same rights sometimes need to be restricted if the aim for such a restriction is *legitimate* and does not violate the *core* of the right, for example, in order to protect other person's rights and freedoms, but sometimes also for the sake of safeguarding peaceful co-existence, law and order more generally in society.

This also means that we cannot deduce the *actual* scope of such legal rights as the ones mentioned above, simply from reading the texts itself. Rights always have to be and are interpreted in context and states that have ratified international human rights treaties are allowed, within certain limits naturally, to decide how they will implement those rights in their own countries, and the level of rights protection that they will provide for their citizens and others in their countries. These national interpretations are, however, subject to international review and oversight.

With regard to the ECHR, for example, it is usually said that the jurisprudence of the ECtHR is set to interpret the ECHR in cases that comes before it as possible cases of human rights violations. This gives us an idea of the *minimum* level of protection that states that are members to the convention have to provide in order not to be found in violation of the convention. However, they can always also go beyond this and provide more extensive protection.

Current Challenges for the European Churches

Freedom of religion or belief is an everyday challenge for some churches as well as other religious communities in Europe and outside of Europe. The legal framework on freedom of religion or belief is challenged very much by rising populism and xenophobia on the European and global

levels. Today we can witness the changing religious landscape in Europe. Also, there are long and ongoing cases of the violation of freedom of religion or belief relating to old-standing conflicts. In the EU in some member states like Croatia, the legal framework is sufficient, but implementation is not at a satisfactory level for religious minorities. In Spain, the Spanish Evangelical Church faces discrimination based on religion or belief in terms of social security, which is threatening to bankrupt the church. In Cyprus, the Church of Cyprus does not have access to its property since 1974 and the majority of church monuments are in the state of collapse.[24] In Bulgaria, another EU member state, a draft 2018 law on religious freedom was very much challenged for its imposing limitations on both majorities and minorities. These are just some challenges that were discussed at a CEC event on human rights within the EU, held on Human Rights Day (10 December) in 2018.

Some CEC Member Churches are coming from countries that are not members of the EU, but are members of the Council of Europe. Freedom of religion or belief remains an issue also for them. In Montenegro, there is ongoing discussion on the new religious freedom law, in Kosovo (UNSR 1244) where monastic life develops under the NATO peace-support operation (KFOR) since 1999, in Turkey with ongoing issues regarding the legal status for the churches, in Armenia with non-recognition of the genocide by Ottoman Turkey, in Lichtenstein there is non-existant legal framework for religious minorities and all residents are obliged to finance through their taxes the Roman Catholic state church. In Russia the Jehovah's Witnesses community face severe restrictions when it comes to practicing their religion and in Ukraine there is an issue with changing jurisdictional allegiance which affects the status of property and struggles between the communities. In 2018 in Iceland

[24] "Turkish Cypriot side restricts Orthodox church services in north" http://cyprus-mail.com/2016/05/24/turkish-cypriot-side-restricts-orthodox-church-services-north/ [accessed 10 Feb. 2019].

churches supported religious freedom while defending the rights of Jews and Muslims to continue practicing circumcision considering a draft law forseeing a ban of circumcision.

There are numerous unresolved challenges in many European countries with regard to religious freedom, including getting licences for religious leaders and professional religious staff who come from abroad to serve in the particular community, as well as the right of importing religious books and materials. On the other hand, in the area of human rights and religious freedom churches from the Middle East, Africa and Asia are asking for help from their European brothers and sisters in addressing human rights violations vis-à-vis the European Union due to ongoing economic and trade agreements with other continents. European churches remain concerned with rising antisemitism and Islamophobia and hate speech against religious communities and individuals leading to hate crime. Discrimination based on religious grounds remains an ongoing issue. Churches do put their efforts toward eradicating this and defending the rights of religious minorities. Therefore, in its ongoing work, CEC will seek to address as many issues as possible relating to helping minorities and majorities in addressing the issue of freedom of religion or belief vis-à-vis various international organisations.

1

THE RIGHTS OF RELIGIOUS MINORITIES

Göran Gunner and Pamela Slotte

Freedom of religion or belief is one of the fundamental human rights. For each and every human being it is essential to be treated fairly and equally without distinction as to race, sex, language or religion. States have an obligation to respect, promote, protect and secure freedom of religion or belief. At the same time, it is obvious that individuals around the world have their rights violated when it comes to this particular freedom.

Freedom of religion or belief extends further than simply a matter for each individual human being when it is provided that the right can be manifested together with others. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) declares that it can be done "either alone or in community with others and in public or private" and worship, teaching, practice and observance are mentioned specifically as forms of religious manifestation (Article 9).[1]

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[1] For the *European Convention for the Protection of Human Rights and Fundamental Freedoms.* http://www.echr.coe.int/Documents/Convention_ENG.pdf [accessed 17 Sept. 2017]. The chapter has been co-written as part of Slotte's academy research fellow project 'Management of the Sacred: A Critical Inquiry', funded by the Academy of Finland 2013-2018 (grant number: 265887) and work as vice-director of the Centre of Excellence in Law, Identity and the European Narratives, Academy of Finland 2018-2025 (grant number: 312430).

Joining together has been a basic concept for Christian faith; either a few individuals "[f]or where two or three are gathered in my name, I am there among them" (Matt 18:20), or a huge community "[s]o those who welcomed his message were baptized, and that day about three thousand persons were added" (Acts 2:41). The result has the establishment of churches, congregations, etcetera. And the same idea of being together goes for most religious communities. The concept used for the individuals coming together may differ: religious organisation, faith community, religious group, religious minority, or the like.

Still, the freedom of religion or belief clearly belongs to the rights-holder, the individual person. But what about the rights for groups like the ones named minority? The ECHR mentions "national minority" but not explicitly "religious minority" while the International Covenant on Civil and Political Rights (ICCPR) talks about "ethnic, religious or linguistic minorities" (Article 27).[2] We will come back to the legal framework in relation to religious minorities, but let us first deal with the concept *religious minority* as such since it is not obvious that the meaning and interpretation is the same from state to state. This is also something that the various specific country studies in this volume make clear.

During the controversy following the decision by President Donald Trump to ban travel into the United States from seven countries, the Pew Research Center in Washington, D.C. published figures about the number of refugees coming to the United States during 2016. Over a third of the refugees were labelled "religious minorities in their home countries," out

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The same applies with regard to the co-editing of this volume and the co-authored introduction.

[2] For the *International Covenant on Civil and Political Rights.* http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx [accessed 17 Sept. 2017].

of whom 61 percent were Christians.[3] This shows that the labelling of groups based on religion as 'religious minorities' is today quite common in the West. The same goes for the national law in some countries, not least in Asia. This is done independently of whether the groups in question are using or looking upon themselves as minorities or even are opposed to such a label.

Let us give some examples of how the concept of religious minority is being used in different states. In some states, the concept religious minority is not used at all – there is just a diversity of religions or faith communities. Attention is not given to majority and minority positions. The concept may also be used as a numerical designation of the relation between majority and minority. One faith community by far outnumbers all others. This may imply a power relation between religious communities in a society where one is dominating, for example, the cultural components in the society or is given priority in the minds of the majority population even if the state treats every faith community in an equal fashion. But this situation has also led to states having a special relation with and giving special treatment to a majority religion including various benefits and financial support. Examples are the state-church relations in the Nordic countries in Europe and the United Kingdom (even if there are recent changes), in some states with Orthodox Christian or Catholic Christian majorities as well as in Muslim states.

One historical background for the minority concept may be found in the Quranic idea of the people of the book (*ahl al-Kitāb'*), including Christians and Jews. The non-Muslim citizens, who surrendered to the Islamic state authority received protection status as protected people, *dhimmi*. Individuals were looked upon as members of a group, a minority, and through the group they were ensured, amongst other things, religious

[3] "Most refugees who enter the U.S. as religious minorities are Christians". http://www.pewresearch.org/fact-tank/2017/02/07/most-refugees-who-enter-the-u-s-as-religious-minorities-are-christians/ [accessed 17 Sept. 2017].

freedom albeit in a limited sense. The Ottoman period introduced autonomy or partial autonomy for various religious communities according to the *millet*-system which was a way to resolve the relationship between the state and different religions – considered to be minorities in part of Eastern Europe and the Middle East under the Ottoman Empire. Still today it is possible to see the implications of this minority status. This focus on minority groups also affected the development of international protection of religious freedom under the League of Nations in the early 20th century.

Religious minority status can also be used by a state to single out specific groups from the majority society. This may imply protection by law for the minority and be a positive thing; however, it can also imply difference. The beliefs and manifestations of a minority religious group are by the state and/or by the majority population considered to run counter to the laws, principles and values of the nation: You are not part of the majority society and thereby considered to be the 'other'. This may not only include traditional religious groups but also new religious movements and the beliefs of immigrants.

As recent events in Pakistan and Egypt show, in societies with social conflicts those minorities can be targeted specifically and even hit by mobs. In some of these situations the religious community completely refuses the concept of minority since they consider themselves to be part and parcel of the society as such (Egypt). Or they – by the same reason – try to orient themselves away from being labelled minority by the laws and by the government (Pakistan). The historical implications in combination with the contemporary experience means that several groups in the Middle East oppose the designation religious minority out of ideological and political reasons because it puts them in a position of exclusion and vulnerability.

A special case for talking about religious minorities are states which have for years hosted groups of people who combine a religious minority

situation with one or more of ethnic, national and/or language minority status. The identity of these groups is not built solely upon religion and religion may not always be the dominant factor. This goes for a lot of European situations. In this case, it is not only an issue of freedom of religion or belief but about protection in a wider sense including for example language and ethnicity. And if we look to the international legal protection of human rights, we can see that it very much has also these kinds of situations in mind. The ICCPR states in Article 27:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Questions put forward in relation to the article are for example: Who defines minority? What is a minority? Who are the beneficiaries of minority rights? In a fact sheet published already in 1998, the UN Office of the High Commissioner for Human Rights states: "No definite answers have been found and no satisfactory universal definition of the term 'minority' has proved acceptable".[4] Several special studies have been assigned for conforming to this article including attempts to provide a definition of minorities.[5] In attempts to sum up various characteristics of minorities, it is usually mentioned that we are dealing with non-dominant groups of individuals who share certain national, ethnic, religious or linguistic characteristics that are different from those of the majority population. Moreover, self-definition forms an element of the

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[4] *Fact Sheet No.18 (Rev.1), Minority Rights*. http://www.ohchr.org/Documents/Publications/FactSheet18rev.1en.pdf [accessed 17 Sept. 2017].

[5] Between 1995 and 2006 a special UN Working Group on Minorities of the Sub-Commission for the Prevention of Discrimination and the Protection of Minorities was active.

identification of 'minority' and it can, for example, take the form of the desire on the part of the members of the groups in question to preserve their own characteristics.[6]

In discussions raising the issue of minority status, what has been underscored as the essential element in the minority rights is the right to identity. One way of dealing with how do define "religious minority" has been to make a division between "belief groups" and "ethno-religious groups". The latter "consists of members bound together by loyalty to common ethnic origin, prominently including religious identity, but interwoven with language, physical (or 'racial') characteristics etc.".[7] It has been much easier to label a specific group as minority when the point of departure is ethnicity or based on linguistic factors compared to religious differences. For example, Sweden's indigenous Sami people can be named a minority regardless of whether they belong to the same religion as the majority of the Swedish people or not. Similarly, with Romani and Meänkieli (Tornedal Finnish) are counted among the official minority languages. But what happens when we distinguishing religious from the other characteristics, if a minority group has a distinct religion but does not stand apart from the majority population as far as, for example, ethnicity and language are concerned?

A question this raises is whether minorities have or should have 'special rights': Are there aspects of their life and reality that the general rights protective framework does not cover or is unable to address in its current form? The answer has been yes when talking about ethnic and

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[6] See, e.g., Nazila Ghanea, "Religious or Minority? Examining the Realisation of International Standards in Relation to Religious Minorities in the Middle East". *Religion, State and Society* 36:3 (2008) 311.

[7] David Little, "Religious Minorities and Religious Freedom: An Overview". In *Protecting the Human Rights of Religious Minorities in Eastern Europe*, edited by Peter G. Danchin and Elizabeth A. Cole. New York: Columbia University Press, 2002, 34.

linguistic minorities in relation to the international conventions, and it has led to work on developing additional protective legal regimes.[8] But, at the same time it is not obvious when isolating the religious aspect. It may be argued that – in such cases – religious minorities have been side-lined from the minority rights regime:

> though religious minorities have been one of the three most explicitly recognized categories of minorities in the minority rights regime, they have largely been excluded from consideration under the umbrella of minority rights.[9]

There seems to be one case when the scope of minority rights is more specifically outlined compared to the freedom of religion or belief regime. When it comes to "the ability of the minority group to maintain its culture, language or religion" the state may take positive measures "necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group".[10] The Human Rights Committee comments on this proactive activity by the state:

> The protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole. Accordingly, the Committee observes

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[8] Examples here are the *European Charter for Regional or Minority Languages of the Council of Europe*, adopted in 1992, and the No. 169 *Convention Concerning Indigenous and Tribal Peoples in Independent Countries*, by the International Labour Organisation, adopted in 1989.

[9] Nazila Ghanea, "Are Religious Minorities Really Minorities?" *Oxford Journal of Law and Religion* 1:1 (2012) 60. One exception is the non-legally binding *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* that was adopted as a UN General Assembly resolution in 1992.

[10] *CCPR General Comment No. 23: Article 27* (Rights of Minorities), 6.2.

> that these rights must be protected as such and should not be confused with other personal rights conferred on one and all under the Covenant. States parties, therefore, have an obligation to ensure that the exercise of these rights is fully protected …[11]

But the new situation in Europe is starting to evoke a new approach to religious minorities. One example can be the right for parents belonging to religious minorities to educate their children according to their own faith. This has been open for discussion in different fora such as the Council of Europe. On 27 April 2017, the Parliamentary Assembly of the Council of Europe adopted the text of the provisional version of the resolution "The protection of the rights of parents and children belonging to religious minorities".[12] The background is clearly the new situation in Europe:

> The landscape of religious communities in Europe is complex and evolving, with traditional beliefs spreading beyond their historical territory and new denominations emerging. Such an environment has the potential to render families belonging to religious minorities ostracised for their views and values in contexts where there is a dominant majority that holds conflicting views.

The Assembly calls upon all member states to protect the rights of parents and children belonging to religious minorities and:

> 5.1. affirm the right to freedom of thought, conscience and religion for all individuals, including the right not to adhere to any religion, and protect the right of all not to be compelled to perform actions that go against their deeply held moral or religious beliefs, while

[11] Ibid., 9.

[12] Resolution 2163 (2017), Provisional version, *The protection of the rights of parents and children belonging to religious minorities*. http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23719&lang=en [accessed 17 Sept. 2017].

ensuring that access to services lawfully provided is maintained and the right of others to be free from discrimination is protected;

5.2. promote reasonable accommodation of the deeply held moral or religious beliefs of all individuals in cases of serious conflict to enable citizens to freely manifest their religion or belief in private or in public, within the limits defined by legislation and provided that this is not detrimental to the rights of others;

5.3. repeal any law or rule which establishes a discriminatory distinction between religious minorities and majority beliefs;

5.4. ensure easy-to-implement options for children or parents to obtain exemptions from compulsory State religious education programmes that are in conflict with their deeply held moral or religious beliefs; such options may include non-confessional teaching of religion, providing information on a plurality of religions, and ethics programmes.

In this case, 'religious minorities' are not necessarily connected to ethnic and/or linguistic minority identities but covers all religious groups in a minority situation either traditional or recently emerging religious groups. The resolution reaffirms a right to non-discrimination and urges contracting states to work towards creating a society that is inclusive and respectful of religious difference. The work on the resolution started after a motion in the Assembly focusing on the rights of parents to educate children according to their own religious and philosophical convictions, especially with regard to minorities. The motion pinpointed derogatory ways of labelling religious minorities such as for example "sects", "sectarian" and "cults" which were said to generate "bias and

stigmatization and lead to undue restrictions to a parent's right to raise and educate their children in conformity with their own beliefs".[13]

Yet, traditionally, in the post-World War II European setting, when religious minorities have been targeted as a group and, for example, discriminated against or been the victims of persecution, the international community has normally addressed this "under the 'freedom of religion or belief' umbrella in international human rights and not under minority rights".[14]

It is also important to note that Article 27 of the ICCPR does not protect "group rights" as such, but refers to "persons belonging to" minorities. So, we are back to freedom of religion or belief as an individual right for each person and sometimes it implies manifesting religious practices together with other individuals. To manifest religion or belief includes, for example, the building of places of worship, participation in rituals associated with certain stages of life, the use of a particular language customarily spoken by a group, the freedom to choose one's religious leaders, priests and teachers and to establish seminaries or religious schools.[15] But to what degree can this freedom also be treated as

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[13] Motion for a resolution tabled on 10 Oct. 2013 by Mr Valeriu Ghiletchi (Moldova).

[14] Nazila Ghanea, "Religious or Minority? Examining the Realisation of International Standards in Relation to Religious Minorities in the Middle East". *Religion, State and Society* 36:3 (2008) 309.

[15] For more details: *CCPR General Comment No. 22.* http://www.refworld.org/docid/453883fb22.html [accessed 17 Sept. 2017]; see also Article 6 in *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.* http://www.un.org/documents/ga/res/36/a36r055.htm [accessed 17 Sept. 2017]. As Ghanea points out, "the 1981 Declaration does not refer explicitly to the collective right to freedom of religion or belief, or indeed to religious minorities. However, to her mind, the things that Article 6 lists are by and large matters that religious persons may engage in together with others. Nazila Ghanea, "Religious or Minority? Examining the Realisation of International Standards in Relation to Religious Minorities in the

a question of the right to be member of a minority religion? That is what we are going to deal with in the following.

Human rights belong to all in equal manner and whether you are part of a religious group that happens to be in a minority position in a particular country should not be allowed to affect the rights and freedoms that you are able to enjoy. The freedom of religion or belief includes the right to belong to a religion or belief of your choice, or as the ICCPR phrases it in Article 18.2: "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice".

In line with this, the European Court of Human Rights (ECtHR) has underscored that the role of European states is to safeguard religious plurality and enhance the possibilities for different religious communities to flourish and co-exist peacefully; not to seek to create a religiously homogenous society. This is interpreted today as meaning that states also have to respect the rights of religious communities. For within the European human rights system, things mentioned above as part of a collective dimension of an individual right to freedom of religion or belief are ascribed also to groups as such.

It is interesting that during the first 40 years of ruling, the ECtHR never found a violation of Article 9. The "margin of appreciation" gave – and to some extent still does today – each country a wide range of freedom in the way they treated religion. The ECtHR decided in 1993 in *Kokkinakis v. Greece* that a conviction of a Jehovah's Witness for proselytising was a violation of the ECHR Article 9.[16] This has been interpreted as a decision "based not so much on protecting individual

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Middle East". *Religion, State and Society*. 36:3 (2008) 307; Nazila Ghanea, "The 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief: some observations". In *The Challenge of Religious Discrimination at the Dawn of the New Millennium*, edited by Nazila Ghanea. Leiden: Martinus Nijhoff, 2003.

[16] *Kokkinakis v. Greece* (Application no. 14307/88, 25 May 1993).

religious freedom, as on preserving the right of religious organizations to exist" and "to send a message to the nations emerging from Soviet domination that Article 9 would henceforth be enforced".[17] Since then the ECtHR (and until 1998 including the European Commission of Human Rights) has decided more than 30 cases in favour of the Jehovah's Witness[18] but also dealt with cases like Scientology,[19] the Salvation Army,[20] and other churches or religious denominations and groups that have held a minority position in a particular country.

What throughout the years has crystallised out of rulings with regard to both majority and minority religious positions is that religious groups *qua* groups enjoy certain rights under the ECHR and they can raise claims under, for example, Article 9 combined with Article 11 (freedom of association). Usually, the terms used in this context to talk about this is "collective religious autonomy," "church autonomy" or "religious autonomy". The ECtHR has found that this includes a right for groups to handle their own internal affairs without arbitrary interference from the state and public authorities. Such own internal affairs include the right to freely determine you own doctrines and how you want to communicate them in rituals and worship, the freedom to decide the criteria for membership and select and exclude followers, as well as the freedom to elect the persons whom you want to entrust religious tasks. These aspects of the right to freedom of religion or belief do not depend on whether you

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[17] James T. Richardson, "Managing Religion and the Judicialization of Religious Freedom". *Journal for the Scientific Study of Religion* 54:1 (2015) 7.

[18] See, e.g., *Jehovah's Witnesses of Moscow and Others v. Russia* (Application no. 302/02, 10 June 2010); *Jehovas Zeugen in Österreich v. Austria* (Application no. 27540/05, 22 Sept. 2012).

[19] *Church of Scientology Moscow v. Russia* (Application no. 18147/02, 5 Apr. 2007); *Church of Scientology of St Petersburg and Others v. Russia* (Application no. 47191/06, 2 Oct. 2014).

[20] *Moscow Branch of the Salvation Army v. Russia* (Application no. 72881/01, 5 Oct. 2006).

are a large or small religious group, whether you are new or have longstanding connections to a specific country or region, or whether you hold a dominant or non-dominant position in society. They are the rights of all religious groups.

Many things that today are important to religious groups and form part of what is considered central manifestations of freedom of religion or belief also require legal personality status, or may be very difficult to achieve without this type of recognised relationship with the state that allows for collective actions; for example, if you want to employ staff, buy a venue or build a place of worship or set up a school or burial ground. In fact, many of the cases where a human rights violation happens with regard to religious groups, and perhaps especially smaller and newer religious groups, concern registration as a religious community for purposes of acquiring legal personality status and the possibility to do just these things.

States usually require that religious groups present some certified documentation about the purpose of the group, how it organizes itself, how it elects members and leaders and so forth. The former UN Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, has noted that it may even be necessary for states to have some such procedures in place. The kind of recognition and legal status a community can achieve may even legitimately differ. Many European states also have multi-tiered systems of legal recognition and distinguish between different types of religious groups (for example between established churches and registered religious communities). But the procedures for registration that states put in place should be transparent and the criteria that have to be fulfilled in order to gain legal recognition should be reasonable, non-discriminatory, and not too difficult to achieve.

Unfortunately, this is not always the case. Sometimes the criteria that are neutral at face value are applied in a discriminatory fashion. Sometimes they are overly vague and allow public authorities wide

discretion to decide which groups to acknowledge. As a result, groups that are treated with suspicion in society at large can end up in a very vulnerable position and subject to arbitrary decisions. Sometimes states from the start set very problematic criteria, which, for example, require that a group must have a theistic creed or a very large number of adherents in order to be allowed to register as a religious association. It may also be the case that the religion seeking to register must have been present for a very long time in the country in question. This amounts to discrimination against newer and smaller groups. Moreover, while states are not allowed to rule on the truth or legitimacy of the beliefs of the group for purposes of registration, a very narrow understanding of what is religion can shine through in the criteria and interpretation of them. This can pose a problem to all kinds of religious groups who seek legal personality status.[21]

Specifically, in some central- and eastern European states regulations are complex and burdensome and even reveal "double standards and prejudices vis-à-vis non-traditional and non-dominant religions".[22] Through the years, the ECtHR has dealt with many cases concerning

[21] For more details, see, e.g., *Report of the Special Rapporteur on freedom of religion or belief*, Heiner Bielefeldt A/HRC/19/60, 22 Dec. 2011. https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/175/41/PDF/G1117541.pdf?OpenElement [accessed 17 Sept. 2017], the *Joint Guidelines on the Legal Personality of Religious or Belief Communities of the Venice Commission*. http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)023-e [accessed Sept. 17, 2017], as well as the *Guidelines on the Legal Personality of Religious or Belief Communities of the OSCE Office for Democratic Institutions and Human Rights*. http://www.osce.org/odihr/139046?download=true [accessed 17 Sept. 2017].

[22] Jeroen Temperman, "Recognition, Registration and Autonomy of Religious Groups: European Approaches and their Human Rights Implications". In *State Responses to Minority Religions*, edited by David M. Kirkham. Abingdon: Ashgate, 2013, 151.

registration of religious minority communities and on numerous occasions found that the state in question has violated the ECHR.[23]

Finally, the right to freedom of religion or belief of an individual[24] or a group as such should not be dependent on whether or not a group obtains legal personality status, for example, as a recognised religious community. Not all groups want to attain legal recognition from the state. They are happy to meet and worship without this sort of state approval and acknowledgment. Registration may even be seen as a double-edged sword. While it may be required in order to obtain certain benefits and services, it can also become an instrument of governmental control. Not all groups are willing to engage so closely in a regulated manner with state authorities. Their resistance to such governance take the form of non-registration as a religious community.

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[23] See, e.g., *Moscow Branch of the Salvation Army v. Russia* (Application no. 72881/01, 5 Oct. 2006); *Case of Biserica Adevărat Ortodoxă din Moldova and Others v. Moldova* (Application no. 952/03, 27 Feb. 2007); *Church of Scientology Moscow* v. *Russia* (Application no. 18147/02, 5 Apr. 2007); *Svyato-Mykhaylivska Parafiya v. Ukraine* (Application no. 77703/01, 14 June 2007); *Religions-gemeinschaft der Zeugen Jehovas and Others v. Austria* (Application no. 40825/98, 31 July 2008); *Masaev v. Moldova* (Application no. 6303/05, 12 May 2009); *Case of Magyar Keresztény Mennonita Egyház and Others v. Hungary* (Application nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, 8 Apr. 2014), *Case of Magyarországi Evangéliumi Testvérközösség v. Hungary* (Application no. 54977/12, 25 Apr. 2017).

[24] *Masaev v. Moldova*, para. 26: "it does not follow, as the Government appear to argue, that it is compatible with the Convention to sanction the individual members of an unregistered religious denomination for praying or otherwise manifesting their religious beliefs. To admit the contrary would amount to the exclusion of minority religious beliefs which are not formally registered with the State and, consequently, would amount to admitting that a State can dictate what a person must believe".

However, what is clear at least within the European human rights system, is that the internal governance of religious communities, be they in a majority or minority position, is not completely beyond judicial scrutiny and state interference can be justified on certain grounds. Very few of the rights protected in international human rights law are indeed absolute in nature. However, there are strict rules for when and how states can justifiably limit these rights. Also, even if and when religious communities may be exempted from parts of valid law, for example, in the area of employment legislation that targets discrimination on the basis of religion, sex or gender, religious communities must respect general law of the land and the human dignity of their adherents. Many times, the scope and limits of the application of general law of the land to the lives and activities of religious communities is negotiated with the state, for example, in the form of concordats between states and the Roman Catholic Church.

As said above, human rights belong to all and the fact that you happen to adhere to a religious group that holds a minority position in a particular country should not be allowed to affect the rights and freedoms that you are able to enjoy. However, discrimination, unfair treatment, denial of rights and outright persecution is a very real experience of many religious communities, as has been emphasised time and again by subsequent UN Special Rapporteur on freedom of religion or belief.[25]

And if the associative rights of religious groups are not respected, it will have a direct detrimental effect on the adherents of these groups and limit their possibilities to exercise their individual freedom of religion or belief, as well as other rights.

When restrictions are placed on religious denominations and groups as such, the implications will target all individuals belonging to such

[25] *Annual reports and other documentation of the UN Special Rapporteur on freedom of religion or belief*. http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FreedomReligionIndex.aspx [accessed 17 Sept. 2017].

groups. One way of categorising the state reactions to religious groups in minority situations differentiates between five types of reactions.[26] The first type is when religious groups are treated as enemies or a threat to the state. The second type include hostility towards non-traditional and minority religions. The third type involves a failure to address social intolerance and to prevent socially-based abuses. The fourth type consists of institutionalised bias as discriminatory legislation, which for example can take expression in the kinds of unfair registration rules that were discussed above. Finally, treating particular groups as illegitimate and as a consequence denying them protection. It is also worth noting there is a high correlation between government regulations and social hostility not the least since social hostility put pressure on responses from the state.[27]

All this tells us something about the complex ways in which religious minorities may experience adverse treatment, and many serious diverse outcomes this may have. Being identified as belonging to a particular possible shun or persecuted religious community can result for example in denial of civil, political, and socio-economic rights too, not just of religious rights. Moreover, adverse treatment may be a consequence of a combination of motives that are not always straightforward. T. Jeremy Gunn has pointed out that association of religion with ethnic identity can fuel intolerance and wide-spread discrimination. Religion then becomes seen as something that threatens the "competing" identity of the persecutor.[28] This also means that it is not always easy to say if intolerance and other destructive behaviour is due to religion per se,

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[26] W. Cole Durham, Jr, "State Reactions to Minority Religions: A Legal Overview". In *State Responses to Minority Religions*, edited by David M. Kirkham. Abingdon: Ashgate, 2013, 5-6.

[27] Brian J. Grim and Roger Finke, *The Price of Freedom Denied: Religious Persecution and Conflict in the Twenty-First Century.* Cambridge: Cambridge University Press, 2011.

[28] T. Jeremy Gunn, "The Complexity of Religion and the Definition of "Religion" in International Law". *Harvard Human Rights Journal* 16 (2003) 189-215, 203.

ethnicity or indeed some other factor. Persecution can take place on multiple grounds that it may be difficult to separate.[29] As former UN Special Rapporteur Abdelfattah Amor has pointed out: "In some cases, it is very difficult to distinguish between religious and racial or ethnic discrimination or intolerance. In other cases the two forms of discrimination may even become confused in the mind of both the perpetrator and the victim of the discrimination".[30]

Hence, the challenges facing religious minorities today are manifold. The question is whether advancing the rights of religious minorities and their adherents will be best dealt with by asking for special protections and tailored solutions for religious minority positions, or by insisting that the same protections must be guaranteed all religious and other belief communities.

We will conclude this chapter by quoting Nazila Ghanea. When trying to bring together the freedom of religion regime with the minority rights protection, Ghanea stresses that minority rights protection should go beyond religious minorities and include "belief minorities".

> (A) 'religious minorities' should be taken to include persons belonging to minorities on ground of both religion and belief … (B) the religious practice of such religious minorities should not only be considered 'manifestations' of religion or belief but also the practice of a minority culture … (C) states need to adopt

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[29] Ibid., 213-214. See also e.g. *Report of the Special Rapporteur on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, Sub-Commission on Prevention of Discrimination and Protection of Minorities*, Commission on Human Rights, Economic and Social Council, 39th Sess., U.N. Doc. E/CN.4/Sub.2/1987/26 (1986).

[30] *Report of the Special Rapporteur of the Commission on Human Rights on Religious Intolerance*, U.N. GAOR, World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, Preparatory Committee, 1st Sess., Annex, Provisional Agenda Item 7, at 32, U.N. Doc A/CONF.189/PC.1/7 (2000).

> positive legal measures to protect the survival and continued development of the identity of religious minorities, should ensure their effective participation in decisions which affect them, have due regard for them, and allow such persons to enjoy their culture.[31]

It is also clear, that in addition to these legal measures, it would also be important to identify other important political, educational and societal measures for the purpose of counteracting discrimination and harassment of religious minority communities and their members, and violation of their human rights.

[31] Nazila Ghanea, "Religious Minorities and Human Rights: Bridging International and Domestic Perspectives on the Rights of Persons Belonging to Religious Minorities under English Law". www.researchgate.net [accessed 17 Sept. 2017].

PART II

FREEDOM OF RELIGION OR BELIEF WITHIN EUROPE – SOME EXAMPLES

2

UNITED KINGDOM

Mark Hill QC

Individual and collective religious freedom finds articulation in international human rights laws and English domestic law. Specific protection is sometimes afforded to adherents of certain religions which can be enjoyed by individuals within that religion: for instance, Sikhs are exempt from the requirement to wear a safety hat on a construction site and from the law relating to the wearing of protective headgear for motor cyclists;[1] while Jews and Muslims enjoy exemptions from rules on animal slaughter methods.[2] More commonly, special provision is afforded on grounds of religion. For instance, it is a defence to charge of having a blade in a public place if the blade is carried 'for religious reasons'.[3] Traditionally these privileges were rare and hard fought.

The Human Rights Act 1998 gave further effect to the rights and freedoms guaranteed under the European Convention for the Protection

[1] Employment Act 1989, s. 11; Road Traffic Act 1988, s. 16.

[2] Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731, Reg 2.

[3] Criminal Justice Act 1988, s. 139.

of Human Rights and Fundamental Freedoms (ECHR).[4] Article 9 of the ECHR provides:

> (1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> (2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

Article 9 provides a positive right to both the freedom of thought, conscience and religion and the manifestation of religion or belief. The right to freedom of thought, conscience and religion is absolute. In contrast, the right to manifest one's religion or belief is limited by Article 9(1) in that the manifestation must be "in worship, teaching, practice and observance" and, more importantly, by the possible qualifications in Article 9(2) which permits the State to interfere with the right if the three tests in Article 9(2) are met. The interference must be "prescribed by law", have one or more of the legitimate aims listed in Article 9(2) and be "necessary in a democratic society".

The case law on individual religious freedom under the Human Rights Act 1998 may thus be conceptualised as involving two broad questions: first, whether there is an interference with the right to manifest under Article 9(1) and second, whether that interference with the right to manifest is justified under Article 9(2).

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[4] Religion is a 'protected characteristic' under the Equality Act 2010, which outlaws discrimination in relation to religion. These detailed provisions are beyond the scope of this chapter.

Strasbourg case law tends to revolve around the definition of 'belief', rather than the definition of 'religion'. The term 'belief' is considered in Strasbourg jurisprudence to require a worldview rather than a mere opinion. It was defined in *Campbell and Cosans v. United Kingdom*,[5] in reference to Article 2 of the first protocol to the ECHR,[6] as denoting "views that attain a certain level of cogency, seriousness, cohesion and importance".[7] However, provided this threshold is satisfied, the Court has held that "the state's duty of neutrality and impartiality is incompatible with any power on the state's part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed".[8]

The manifestation requirement requires that the claimant's actions actually express his religion or belief: a manifestation rather than mere motivation.[9] The decision of the Strasbourg Court in *Eweida and Others v. United Kingdom* corrects a confusion found in some domestic judgments concerning whether an act had to be obliged by the religion in question in order to be a manifestation. In *R v. Secretary of State for Education and Employment and others ex parte Williamson*,[10] headteachers, teachers and parents of children at four independent schools where discipline was enforced by the use of mild corporal punishment alleged, *inter alia*, that the new ban on corporal punishment in schools[11]

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[5] *Campbell and Cosans v. United Kingdom*, (Application no. 7511/76 and 7746/76, 25 Feb. 1982).

[6] See Part IX.

[7] Paragraph 36. This definition has also been applied to Article 9: *Eweida and Others v. United Kingdom* (Application no. 48420/10, 59842/10, 51671/10 and 36516/10, 15 Jan. 2013), para. 81: "The right to freedom of thought, conscience and religion denotes views that attain a certain level of cogency, seriousness, cohesion and importance".

[8] *Eweida and Others v. United Kingdom*, para. 81.

[9] *Arrowsmith v. United Kingdom* (Application no. 7050/75, 12 Oct. 1978).

[10] [2005] UKHL 15, [2005] 2 AC 246.

[11] Education Act 1998 s. 548 (as amended in 1998).

breached Article 9 as being incompatible with their belief that physical punishment was part of the duty of education in a Christian context.[12]

In *R on the Application of Bashir v. The Independent Adjudicator and HMP Ryehull and the Secretary of State for Justice,*[13] the High Court suggested that beliefs did not need to be obligatory to be protected under Article 9. The case concerned a prisoner who was charged with failing to obey a lawful order contrary to Rule 51(22) of the Prison Rules 1999 when he failed to provide an adequate urine sample as a result of a voluntary religious fast. Judge Pelling QC, sitting as a Deputy High Court Judge, held that this represented a breach of the prisoner's Article 9 rights.

In *Eweida and Others v. United Kingdom*[14] the Strasbourg Court concluded that:

> Given the importance in a democratic society of freedom of religion, the Court considers that, where an individual complains of a restriction on freedom of religion in the workplace, rather than holding that the possibility of changing job would negate any interference with the right, the better approach would be to weigh that possibility in the overall balance when considering whether or not the restriction was proportionate.[15]

In Strasbourg jurisprudence the focus invariably shifts from the question of interference under Article 9(1) to the Article 9(2) qualifications, which

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[12] See, for instance, Proverbs 13:24.

[13] [2011] EWHC 1108 (Admin).

[14] *Eweida and Others v. United Kingdom*.

[15] *Eweida and Others v. United Kingdom,* para. 83. See also the para. 2 of the partly dissenting opinion of judges Bratza and Björgvinsson. For a discussion of the implications of *Eweida v. United Kingdom*, see Mark Hill, "Religious Symbolism and Conscientious Objection in the Workplace". *Ecclesiastical Law Journal* 15:2 (2013) 191-203.

are used to determine whether the interference by the State was justified.[16] The same is also true of domestic decisions which address the three tests laid out in Article 9(2) applying them one by one: to be justified the interference must be "prescribed by law", have a "legitimate aim" and be "necessary in a democratic society".

Although in most cases the legitimate aim is protecting the rights and freedoms of others,[17] referring to the Convention rights of others,[18] a wide range of legitimate aims have been cited by courts. The question of how narrow a legitimate aim may be was addressed by the Court of Appeal in *R (on the Application of Swami Suryananda) v. Welsh Ministers*[19] concerning the decision by the Welsh Assembly Government to order the slaughter of Shambo, a bullock at the claimant's Hindu temple, who had tested positive for the bacterium that causes bovine tuberculosis.[20] The Court of Appeal unanimously allowed the appeal and on the question of the legitimate aim held that, although there is a risk that an objective may be framed so narrowly that it becomes coincident with the results sought, in the instant case the Welsh Ministers had a public health objective – the

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[16] Where the interference with Art. 9 was not directly attributable to the State, since it was the actions of a private company, for instance, then "the Court must examine whether in all the circumstances the State authorities complied with their positive obligation under Article 9; in other words, whether [the applicant's] right freely to manifest her religion was sufficiently secured within the domestic legal order and whether a fair balance was struck between her rights and those of others": *Eweida and Others v. United Kingdom,* para. 91.

[17] See *Begum*, Lord Bingham at para. 26, Lord Hoffmann at 58 and Baroness Hale at 94.

[18] The Supreme Court has recently questioned, however, whether "the 'rights of others' for the purpose of Article 9(2) (and indeed the other qualified rights in the Convention) are not limited to their Convention rights but include their rights under the ordinary law": *Bull v. Hall* [2013] UKSC 73 at para. 44.

[19] [2007] EWCA Civ 893.

[20] See Russel Sandberg, "Controversial Recent Claims to Religious Liberty". *Law Quarterly Review* 124:2 (2008) 213-217.

eradication or at least control of bovine tuberculosis and so the Minister was entitled to make the decision she did.

The requirement that the interference be necessary in a democratic society requires two tests to be met: the interference must correspond to a "pressing social need" and it must be "proportionate to the legitimate aim pursued".[21] Most cases concerning Article 9(2) focus upon the issue of proportionality. There needs to be a "reasonable relationship of proportionality between the means employed and the aim sought to be achieved".[22] In *Begum*, for instance, the House of Lords conceptualised the question largely in terms of proportionality, giving scant attention to identifying a pressing social need.[23] Lady Hale concluded that the school's uniform policy was a thoughtful and proportionate response to reconciling the complexities of the situation.[24]

In *Bull v. Hall*[25] Lady Hale accepted that "the scope for reasonable accommodation is part of the proportionality assessment, at least in some cases".[26] Her Ladyship also confirmed that following *Eweida and Others v. United Kingdom*[27] the specific situation rule was "to be taken into account in the overall proportionality assessment, which must therefore consider the extent to which it is reasonable to expect the employer to accommodate the employee's right".

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[21] *Serif v. Greece* (Application no. 38178/97, 14 Dec. 1999).

[22] *Francesco Sessa v. Italy*, (Application no. 28790/08, 3 Apr. 2012), para. 38.

[23] Lord Bingham para. 26, Lady Hale at para. 94.

[24] Paragraph 98. Drawing upon *Şahin*, Lord Bingham concluded that that the interference with the Article 9(1) right was proportionate since the school "had taken immense pains to devise a uniform policy which respected Muslim beliefs but did so in an inclusive, unthreatening and uncompetitive way": para. 34.

[25] [2013] UKSC 73.

[26] At para. 47.

[27] This has been recognized by the Supreme Court: *Bull v. Hall* [2013] UKSC 73 at para. 47.

Religious groups enjoy a number of exceptions from general rules, including those in discrimination law. At first sight, section 13 of the Human Rights Act 1998 seems to accord a special protection for the religious freedom of religious organisations. It reads:

> (1) If a court's determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.

Section 13 was the result of lobbying by religious groups during the passage of the Human Rights Bill through Parliament. In practice, it seems that the section is a dead letter: section 13 hardly features in higher court judgments concerning freedom of religion.[28] Commentators seem agreed that the section is "rather mild",[29] largely symbolic[30] and "at best an articulation and codification" of the pre-Human Rights Act position.[31]

Strasbourg has held that Article 9 permits religious autonomy and diversity in terms of the regulation of religious groups. Convention organs have accepted a variety of Church-State relations as being part of the contracting State's margin of appreciation. Mild forms of State preference

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[28] Mark Hill, *Ecclesiastical Law*, 3rd ed. Oxford: Oxford University Press, 2007, para. 1.47.

[29] Rex Ahdar and Ian Leigh, *Religious Freedom in the Liberal State*. Oxford: Oxford University Press, 2005, 359.

[30] Peter Cumper, "The Protection of Religious Rights under Section 13 of the Human Rights Act 1998". *Public Law* Summer (2000) 265; John Wadham and Helen Mountfield, *Blackstone's Guide to the Human Rights Act 1998.* London: Blackstone, 1998, 55.

[31] Mark Hill, "Judicial Approaches to Religious Disputes". In *Law and Religion*, edited by Richard O'Dair and Andrew Lewis. Oxford: Oxford University Press, 2001, 419.

for one religion over another do not violate the ECHR. It was noted in *Darby v. Sweden:*[32]

> A State Church system cannot in itself be considered to violate Article 9 of the Convention…. However, a State Church system must, in order to satisfy Article 9, include specific safeguards for the individual's freedom of religion.

British courts have followed Strasbourg in admitting claims by religious groups.[33]

[32] *Darby v. Sweden* (Application no. 11581/85, 23 Oct. 1990).

[33] See also *New Testament Church of God v. Stewart* [2007] EWCA Civ 1004, discussed in Part VI.

3

MONTENEGRO

Nikifor Milovic

Legal Basis

In accordance with the commitment to the secular character of the state, in the Constitution of Montenegro (2007), religious communities are separated from the state, equal and free to conduct religious observances and activities (Article 14). The constitutional provisions on the freedom of religion and belief are mostly in accordance with the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) which, along with other generally accepted rules of international rights, are an integral part of the internal legal system. The ECHR is of foremost importance for the protection of freedom of religion in Europe.[1] International standards have priority over national legislation and are directly applicable when they regulate matters differently from internal legislation. So, everyone is guaranteed the right to freedom of thought, conscience and religion, as well as the right to change one's

[1] Gerhard Robbers, "Which international law commitments to include into a Law on Religion". In *The Legal Position of Churches and Religious Communities in Montenegro Today*, Proceedings of the International Conference (Bar, 23-25 May 2008), edited by Bogoljub Šijaković. Nikšić: Bona Fides, 2009, 17-35.

religion or belief as well as freedom to manifest religion or belief, in worship, teaching, practice and observance, alone or in community with others and in public or private, (Article 46 section 1 of the Constitution). No one is obliged to declare their religious or other belief (Article 46 section 2). In one particular place, in the Constitution it is emphasised that everyone has the right to conscientious objection and no one is obliged to fulfil military or other obligations, which includes the use of weapons (Article 48). The freedom to manifest one's religious belief can be restricted only in cases where it is necessary in order to protect people's life and health, public peace and order, as well as the other rights guaranteed by the Constitution (Article 46 section 3 of the Constitution).

Institutional Framework

All south-eastern European countries have regulated their relations with churches and religious communities in accordance with modern international and European standards on freedom of religion or belief through enactment of related contemporary and democratic laws. On the contrary, the Law on the Legal Position of Religious Communities of 1977 (LLSRC) from the period of the Socialist Federal Republic of Yugoslavia, written in the spirit of Marxist-atheistic ideology, is still in force in Montenegro today. The freedom of religion is defined as an individual's private matter and is guaranteed by Article 1 of the LLSRC. In Article 4 of the LLSRC, it is stated that religious communities are free to conduct religious activities and observances and that their activity must be in line with the Constitution and the law. No one may in any way be forced to become a member of a religious community, to remain a member of that religious community. Every form of coercion in regard of participation in religious observances or other expressions of religious feelings is forbidden. The law connects the freedom of religion with belonging to a religious community, which is not compatible with Article

9 of the ECHR. Hence, according to Article 7 section 4 of the LLSRC, no one may prevent a member of a religious community from exercising the rights that he has as a citizen. In Articles 25 and 26 of the LSSRC, it is prescribed that religious communities can be subject to a fine for misdemeanours. The LSSRC also prescribes a number of restrictions.

Despite the total obsolescence of the existing law, an encouraging fact is that the Government of Montenegro has recognised the importance of enactment of a new law[2] that will adequately and effectively regulate the freedom of religion or belief and the legal status of religious communities in line with the ECHR through additional protocols and other relevant and important international documents, as well as with the practice of the European Court of Human Rights in Strasbourg.[3]

In order to provide the opportunity to sort out certain specific issues and, at the same time, expressing understanding and readiness to cooperate in finding an acceptable solution in its mutual relations, the Government decided to pursue a contractual regulation of relations between the state and some churches and religious communities. The Basic Agreement between Montenegro and the Holy See, which regulates the legal framework of the relations between the Roman Catholic Church and the state of Montenegro was signed on 24 June 2011 in the Vatican.[4] So, the Catholic Church and its institutions gained the status of public law bodies on the basis of the Basic Agreement, but this is still not

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[2] Proposal to amend the working program of the Government of Montenegro for 2013. http://www.gov.me/ResourceManager/FileDownload.aspx?rId=144887&rType=2 [accessed 4 July, 2015].

[3] Gerhard Robbers, "Which international law commitments to include into a Law on Religion". In *The Legal Position of Churches and Religious Communities in Montenegro today*, Proceedings of the International Conference (Bar, 23-25 May 2008), edited by Bogoljub Šijaković, Nikšić: Bona Fides, 2009, 17-35.

[4] Law on Ratification of Basic Agreement between Montenegro and Holy. http://www.gov.me/ResourceManager/FileDownload.aspx?rId=98490&rType=2 [accessed 4 July 2015].

implemented in practice. Other religious communities enjoy legal status by way of civil law. The Government signed similar agreements about the regulation of issues of mutual interest with the Islamic and Jewish communities in Montenegro. Also, the Government has to be complimented on the formation of mixed commissions with each of the aforementioned communities towards the implementation of mutual agreements. Although there are significant differences in terms of the contracts which the Holy See signs with various countries, this type of regulation of relations has become somewhat common feature of the new EU members. It should be clear that such agreements do not generally give some privileges to the Roman Catholic Church, but serve as a guarantee for rights already secured by domestic law and provide a greater contribution to legal certainty for all religious communities.[5]

Current Challenges

The Government of Montenegro issued on 30 July 2015, a Draft Law on Freedom of Religion.[6] It is noteworthy this Draft Law is on a progressive and liberal basis. However, it deviates in many of its provisions, from the relevant international conventions, standards and obligations of Montenegro in the field of human rights and freedom of religion or belief. It causes grave concern for the churches and religious communities because, if adopted as proposed, the principle of non-discrimination will be undermined.

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[5] Balâzs Schanda, "Covenant cooperation of state and religions in the post-communist member countries of the European Union". In *Religion and Law in Dialogue/Covenantal and Non-Covenantal Cooperation between State and Religion in Europe*, edited by Richard Puza and Norman Doe. Leuven: Peeters, 2006, 262.

[6] Draft Law on Freedom of Religion of Montenegro. http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF (2015)032-e, [accessed 15 Sept. 2016].

Current provisions of the Draft Law guarantee freedom of religion only to "citizens" whereas all persons in Montenegro who do not have Montenegrin citizenship will be excluded from the enjoyment of these fundamental rights and freedoms in respect of religion.

Unfortunately, this constitutes a discriminatory act against foreign nationals and ethnic minorities without Montenegrin passport inconsistent with Article 9(1) of the ECHR, which stipulates that "everyone has the right to freedom of thought, conscience and religion". Also, the European Court of Human Rights in its practice is of the opinion that legislation cannot prevent the founders of religious communities being foreigners.[7] Montenegro will, by this Draft Law, put in place unacceptable restrictions on foreign nationals or ethnic and cultural minorities in the enjoyment of fundamental rights and freedoms.[8]

Moreover, the Draft Law on Freedom of Religion contains legal provisions that seriously undermine the autonomy of churches and religious communities, creating the legal basis for arbitrary state interference in their internal affairs. According to this Draft Law, the State will have the power to interfere with the appointment of high religious dignitaries (i.e., it stipulates that prior to the appointment of a high religious dignitary, the religious community shall confidentially notify the Government of Montenegro about this). It was one thing that had always been decided in an autonomous way by the churches themselves. This provision not only imposes an unreasonable and unjustifiable obligation on churches and religious communities, but it also undermines the concept of separation between Church and State.

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[7] *Moscow Branch of the Salvation Army v. Russia* (Application no. 72881/01, 5 Oct. 2006), para 82.

[8] Statement Concerning the Draft Law on Freedom of Religion in Montenegro. http://www.eprid.eu/eprid-statement-concerning-the-draft-law-on-freedom-of-relig, [accessed 15 Sept. 2016].

An extremely severe undermining of the autonomy of churches and religious communities can be seen in the provision where "the territorial configuration" of a religious community that is registered and operates in Montenegro, cannot extend outside of Montenegro. Also, the following solution stipulates that the headquarters of a religious community that is registered and operates in Montenegro must be located in Montenegro. The mentioned provisions would undermine the right of churches and religious communities to their own internal rules governing their structure and organization, which is at the core of their autonomy.

Furthermore, the majority of properties that belonged to churches and religious communities were nationalised after World War II (1945) by the revolutionary communist government. Law on Fair Restitution dealt in detail with the issue of restitution of nationalised property to all former owners, including churches and religious communities.[9] This law was soon declared unconstitutional and repealed. Another Law on Restitution and Compensation of Property Rights was adopted later on and Article 8 of the Law predicts: "the conditions, manner and procedures for restitution of deprived property rights of religious communities shall be defined with a special law".[10] In this manner, the issue of restitution, as well as other issues related to the property of religious communities, has yet to be regulated more specifically with some future law. Amendments to this Law allowed churches and religious communities the opportunity to submit an application for registering appropriated property in favour of national, state, social or cooperative properties with the clear definition that the application itself does not represent a request for the exercising of rights to restitution or compensation (Article 8a).[11] Later on, the state committed itself with the Fundamental Agreement with the Holy See, and also the agreements with Muslim and Jewish communities, to establishing

[9] *Official Gazette of the Republic of Montenegro*, No. 34/02, 68/02 and 33/03.
[10] *Official Gazette of the Republic of Montenegro*, No. 21/04.
[11] *Official Gazette of the Republic of Montenegro*, No. 49/07.

a Mixed Commission consisting of representatives of the parties, in order to define the property that is to be transferred to church or religious communities' ownership, or to be adequately compensated for. So far, nothing has been done.

In 2005, Diocese of Budimlje and Nikšić of Serbian Orthodox Church filed a lawsuit against the Montenegrin state at the European Court of Human Rights in Strasbourg for the property allegedly seized from them after the end of World War II. The court declared application inadmissible, on the grounds that "the key provisions of the law which they had relied had been declared unconstitutional before they filed their request".[12]

The Draft Law in its transitional provisions contains a solution, by which sacral objects and land belonging to churches and religious communities will be taken away from them. Provisions of Article 52 actually refer to confiscation and nationalisation of religious buildings. It is unbelievable that the secular Montenegrin authorities, which actually for many years have refused to carry out restitution of the property that the communist government confiscated after World War II, are making provision for and intend to carry out the confiscation and nationalisation of religious buildings.

The unresolved legal status of the Serbian Orthodox Church and the absence of a law that would regulate restitution of church property nationalised after World War II, as well as the systematic support of certain segments of the government given to different anti-ecclesiastical associations, groups and individuals, indicate that a breach of the principle of separation of Church and State thus occurred in this way, as well as the infringement of the equality of religious communities proclaimed by the Constitution of Montenegro in 2007. Also, the Draft Law on Freedom of Religion in Montenegro does not comply with

[12] *Eparhija budimljansko-nikšićka v. Montenegro* (Application no. 26501/05, 9 Oct. 2012).

European and international standards on human rights and freedom of religion or belief. The Law on Freedom of Religion would, if adopted in its present draft text, seriously jeopardise religious freedom, the autonomy of Churches and Religious Communities and the principle of non-discrimination. These reasons can only have as a consequence the withdrawal of the Draft Law from the further procedure.

4

BELARUS

Natallia Vasilevich

Religious Demography and State Policy

Nothing better illustrates the results of communist anti-religious policies in Belarus than the dramatic decrease of Orthodox and Roman Catholic parishes since 1917. This impact was multiplied by secularisation due to transformation of social structures. At the end of the Soviet epoch there were fewer than 500 registered parishes of these two formerly predominant churches for a population of about 10 million.[1]

The religious revival of the 1990s, starting with the celebration of the Millennium of the Christianisation of Rus in 1988, and continued with freedom of religion and belief during the first democratic years of the newly independent Republic of Belarus strongly reshaped the religious landscape. From 1989 until 1996 the number of Orthodox parishes grew by 135%, Roman Catholic parishes grew by 207%, and the numbers of

[1] In 1986 there were 369 Orthodox and 86 Catholic parishes, See more: Старостенко, В.В., "Тенденции и особенности современной конфессиональной ситуации в Республике Беларусь". *Весник МДУ імя А.А. Куляшова* 1 (20) (2005) 26-34, 28; Навіцкі, У.І. (ed.). *Канфесіі на Беларусі (канец XVIII–XX ст.)*. Мінск: ВП „Экаперспектыва", 1998, 311.

Pentecostal[2] churches grew by 700% (See Table 1). In 1999 for the first time in history the number of Pentecostal communities (414[3]) exceeded the number of Roman Catholic parishes (399[4]). This led some analysts to postulate a "confessional revolution" that may turn Belarus into a "Protestant country".[5] Protestant communities were not exclusively concerned with narrowly religious and missionary activities, but also became publicly visible and gained political importance by engaging in

[2] Their self-identification is "Christians of evangelical faith". Before 1989 only a few autonomous Pentecostal communities were officially registered, while many of them were forced to join Baptist Union (Soyus Evangelskikh Hristian Baptistov), and many existed illegally underground. See History of Pentecostal Movement (In Russian), Official website of the United Church of Christians of Evangelical faith in Belarus: http://www.cxbe.by/obrazovanie/rasshirennoe_verouchenie/istoriya_proishozhdeniya_pyatidesyatnicheskogo_dvi/. Therefore, Baptists were the only confession whose numbers of communities dropped between 1988 and 1991, from 191 to 108. See Шерис, А.В. *Влияние религиозного фактора на обеспечение национальной безопасности Республики Беларусь*. Минск: Право и экономика, 2015, 150.

[3] Пастухова, Е. "Современное состояние пятидесятнического движения в Беларуси". In *Посткоммунистическая Беларусь в процессе религиозных трансформаций. Сборник статей* edited by Данилов А.В. Минск, Адукацыя і выхаванне, 2002, 67.

[4] "Сердюк В. Римо-католики Беларуси. 1991-2001". In *Посткоммунистическая Беларусь в процессе религиозных трансформаций. Сборник статей* edited by Данилов А.В. Минск, Адукацыя і выхаванне, 2002, 29.

[5] Шевцов Ю. "Летать рожденный не может ползать. Конфессиональная структура Беларуси и ее трансформации" In *Беларусь: страна базирования. Геополитические тенденции, в сфере действия которых находится Беларусь*, Мн.2011. http://zvezda.ru/geopolitics/data/belarus.htm#8.%20Общество%20и%20его%20гиганты [accessed 4 Jan. 2018]; Шевцов Ю. *Объединенная нация: феномен Беларуси*. Москва, 2005, 46-48.

many types of social activity.[6] In some local contexts this produced new types of regional civil society and economic activities.[7]

However, by about 2000 the growth in religiosity[8] in general and in the number of religious communities[9] had become static. After the 1996 constitutional referendum, when a new constitution was adopted giving excessive power to the president, state policy towards civil society in general and towards freedom of religion or belief in particular became more restrictive. During the first decade of the 2000s many tensions arose from the regime's attempts to establish stronger control of Protestants through different legal and administrative means. This sparked greater political activity and protests from Protestants.[10] Freedom of religion became a central issue, to the extent that some political scientists saw the conflict between believers and the government as "the very core of the life of society".[11] In 2008 fifty thousand signatures were collected in a Protestant-organised petition to change the Religion Law.[12] The

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[6] Natallia Vasilevich, Unequal by default: Church and state in Belarus in the period of consolidated authoritarianism // Civil Society in Belarus, 2000-2015. Collection of texts. Warsaw: East European Democratic Centre, 2015, 97-127, 103-107.

[7] Егоров, Андрей. "Малые города: who governs?" *Палітычная сфера* 12 (2009) 44-55, 50.

[8] Новикова Л.Г. Религиозность в Беларуси на рубеже веков: тенденции и особенности проявления (социологический аспект). Минск, 2001, 83-86.

[9] See Table 1. and Chart 1.

[10] See more, Natallia Vasilevich, Unequal by default: Church and state in Belarus in the period of consolidated authoritarianism // Civil Society in Belarus, 2000-2015. Collection of texts. Warsaw: East European Democratic Centre, 2015, 103-107.

[11] Ягораў, Андрэй, Кентавр-система "Пост-голодовка" http://methodology.by/?p=184 [accessed 4 Jan. 2018].

[12] Natallia Vasilevich, "Religion in Belarus: 1020th Anniversary of Christianity". In *Belarusian Yearbook 2008: A survey and analysis of developments in the*

authorities carried out many raids, and imposed many fines, short-term jail sentences, deportations of foreigners from the country, and entry bans. These state actions produced protests, for example, a mass hunger-strike by members of Minsk's New Life Church as one episode in the many conflicts flowing from the authorities' many attempts for years to close the Church's place of worship.[13] At the same time the regime encouraged the Belarusian Orthodox Church to acquiesce in a subservient and asymmetric relationship of clientelism.[14]

Legal Basis: International Norms and Mechanisms

Although Belarus ratified the International Covenant on Civil and Political Rights (ICCPR) in 1973, it was only in 1992 that the country signed the ICCPR's First Optional Protocol establishing an individual complaint mechanism to the UN Human Rights Committee.[15] That is the only international human rights complaint mechanism available to Belarussians, as Belarus is not a signatory to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). So the ECHR Article 9 provisions concerning freedom of thought,

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Republic of Belarus in 2008, edited by A. Pankovsky and V. Kostyugova. Minsk: BISS, 2009, 158-168, 161.

[13] See more, Natallia Vasilevich, Unequal by default: Church and state in Belarus in the period of consolidated authoritarianism // Civil Society in Belarus, 2000-2015. Collection of texts. Warsaw: East European Democratic Centre, 2015, 111-114.

[14] Ibid., 114-118.

[15] There have been two judgements following complaints from Belarus in relation to Article 18 and related rights: 1) *Malakhovsky, Pikul and others v. Belarus*, Communication No. 1207/2003, U.N. Doc. CCPR/C/84/D/1207/2003 (2005); *Pivonos v. Belarus*, Communication No. 1830/2008, U.N. Doc. CCPR/C/106/D/1830/2008 (2010); one complaint is still undergoing the process: *Borovik v. Belarus*, Communication No.2695/2015.

conscience and religion and judgments of the European Court of Human Rights in Strasbourg do not apply in Belarus.

The ICCPR Article 18 provisions concerning freedom of thought, conscience and religion together with its interpretative General Comment No. 22 are normative in relation to freedom of religion or belief. But these and related international human rights standards are not fully implemented in Belarus. Although the current Belarusian Constitution in its Article 8 asserts the priority of international law, Article 21 recognises that "the state guarantees the rights and freedoms of citizens of Belarus, which are fixed in the Constitution, laws and which are provided by international obligations of the state".

So, international norms (which apply to everyone, not only citizens) do not enjoy direct enforcement under the Constitution. To be implemented or referred to, international human rights standards must be taken into national legislation, despite the stipulations of the Law "on international treaties" and the Law "on legislation", both of which insist that:

> legal norms contained in the international treaties of the Republic of Belarus, are part of the legislation in force in the territory of the Republic of Belarus and are subject of direct implementation, except if it follows from the international treaty itself that an adoption of internal legal act is required for the enforcement of such norms (Article 33, paragraph 3 and Article 20 respectively).

The current Law on Freedom of Conscience states in Article 40 that:

> if an international covenant which was concluded by Republic of Belarus lays down other provisions than those included in the present Law, the rules of the international covenant shall be applied (Article 40).

But in reality, this provision has not been implemented.[16] As the then Head of the Constitutional Court Ryhor Vasilevich admitted in 2001, although it should happen, the international norms which are obligations of the Republic of Belarus under international law are still not directly enforced by the majority of state authorities – including the judiciary.[17]

Another international mechanism employed for the promotion of respect for international standards on freedom of religion and belief is the UN Universal Periodic Review (UPR). In 2015, during the second cycle of the UPR, Belarus received the following recommendation from the Holy See concerning freedom of religion or belief: "Ensure that no restrictions are imposed on the right to freedom of religion and belief, and guarantee greater respect for the right to freedom of expression and freedom of association" (129.55). Although this recommendation was accepted by the Republic of Belarus, no adequate measures to implement this recommendation have been taken.[18]

The perceived inadequacy of the enforcement mechanisms for international human rights standards, as well as the perceived potential for greater conflict between religious communities or individual believers

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[16] Шавцова, Дина, "Основы конституционной защиты права на свободу религии или вероисповедания в Республике Беларусь", http://forb.by/node/385 [accessed 4 Jan. 2018].

[17] Василевич, Григорий, Конституция и международные договоры белорусского государства как основа деятельности Конституционного Суда Республики Беларусь, Вестник Конституционного Суда Республики Беларусь. 2 (2001) 103-110.

[18] Special decree of the Belarusian government "The Multi-Agency Plan for 2016-2019 on implementation of recommendations accepted by the Republic of Belarus under the second cycle of the UPR and addressed to the Republic of Belarus by Human Rights Treaty Bodies," 2016. http://www.government.by/upload/docs/file706bbd75fa0cca0e.PDF [accessed 4 Jan. 2018]. included only annual interfaith and interethnic relations study programs for media workers and annual awards for mass media that promote interfaith peace and cooperation in relation to this recommendation.

and the government, have contributed to victims of state human rights violations not using those enforcement mechanisms.[19]

National Legislation and Institutions

The first Law on Freedom of Conscience and Religious Organisations in independent Belarus was adopted in 1992 and recognised the right of individuals to

> decide freely on their attitude to religion, either alone or in community with others, to confess or not to confess any religion, to manifest and to share beliefs related to a person's attitude to religion (Article 3 paragraph 1).

It also incorporated the ICCPR's Article 18 paragraph 3 permissible limitations on the freedom of religion or belief almost word by word:

> Realisation of freedom to confess one's religion or to manifest one's belief may be subject only to such limitations as are necessary to protect public safety, order, life, health, morals, or the fundamental rights and freedoms of others (Article 3 paragraph 4).

The first democratic Constitution of 1994 guaranteed freedom of religion or belief using the words of Article 3, paragraph 1 of the 1992 Law on Freedom of Conscience with the following addition: "to participate in religious worship, cults and rituals" (Article 31). The 1994 Constitution also stated the equality of all religions and confessions before the law, and the inadmissibility of the state favouring or restricting any religion or confession in relation to another (Article 16).

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[19] Шавцова, Дина, Василевич, Наталья, "Свобода религии в Беларуси. "Узаконенные" ограничения: можно ли изменить ситуацию?" http://forb.by/node/518 [accessed 4 Jan. 2018].

However, in 1996 the Constitution was significantly changed to allow an authoritarian non-democratic political regime, as well as a more restrictive approach to freedom of religion or belief specifically with a new approach to belief-state relations. Article 31 was changed to restrict the freedom to participate in religious worship and rituals to only "those not forbidden by the law". Article 16's banning of state favouritism for or restrictions on certain religions or confessions in relation to other was replaced with this statement:

> the relationships of the state and religious organisations are regulated by law with regard to their influence on the formation of the spiritual, cultural and state traditions of the Belarusian people.

In 2001 a new National Security Concept was adopted,[20] which defined "the energetic efforts of foreign religious organisations and missionaries to monopolise [!] the spiritual life of society" (paragraph 7.2.6) as one of the main threats to national security in the humanitarian field. Similarly, "counteracting the negative influence of foreign religious organisations" and "ensuring the monitoring of the ethno-confessional field" (paragraph 7.3.7) were stated as two of the main priorities for maintaining national security.

The following year in 2002 the 1992 Law on Freedom of Conscience was significantly changed. A new preamble was added giving a hierarchy of five religious traditions claimed to have a special influence and therefore status. The Orthodox Church was placed first as "having a key role in the development of the spiritual, cultural and state traditions of Belarusian nation", the Catholic Church second as "having spiritual, cultural and historical role on the territory of Belarus", and in third place the Evangelical-Lutheran Church stated as being inseparable from the

[20] Указ Президента Республики Беларусь от 17.07.2001 г. №390 "Об утверждении Концепции национальной безопасности Республики Беларусь".

history of the Belarusian people, followed by Judaism and Islam. The Law repeated Article 16 of the 1996 Constitution's permission for state favouritism for some religious organisations based on a claimed influence on the formation of the spiritual, cultural and state traditions of the Belarusian people (Article 8 paragraph 1), and introduced the possibility for the state to conclude agreements on cooperation with religious organisations in the framework of the civil law on the basis of the hierarchy outlined in the Law's preamble (Article 8 paragraph 7). The only religious community which currently enjoys special status and has concluded an agreement with the state is the Belarusian Orthodox Church. Although some agreements of certain state institutions with the Orthodox Church existed before 2002, since the Law entered into force in 2003 they reached a new level and became widespread. This created a complicated and even chaotic system of contradictory national and regional agreements. These also took the forms of "declarations" on the one hand and programs of concrete events on the other.[21]

The 2002 Law on Freedom of Conscience also introduced a requirement for compulsory state registration of all religious organisations (Article 16, paragraph 1) and strict geographical limits upon where state-permitted manifestations of freedom of religion and belief may take place. In 2005 a new Article 193-1 was added to the Criminal Code punishing participation in any activities of any unregistered (including religious) organisation with a fine or imprisonment for up to two years. There were several cases of the official warnings to believers

[21] Василевич Н., Кутузова Н. "Партнерство религиозных организаций Беларуси с органами власти". //Кутузова Н., Карасева С., Василевич Н. и др. In *Религиозные организации в общественном пространстве Беларуси и Украины: формирование механизмов партнерства*. Вильнюс: ЕГУ, 2004, 53-68; Natallia Vasilevich, Unequal by default: Church and state in Belarus in the period of consolidated authoritarianism // Civil Society in Belarus, 2000-2015. Collection of texts. Warsaw: East European Democratic Centre, 2015,113-118.

on the basis of this Article,[22] but no criminal prosecutions. Although at present the government is not using this Article against anyone participating in unregistered religious organisation, the risk of such prosecutions remains.

The 2002 changes also introduced strict requirements for registration, such as a necessity to have at least 20 members of legal age who are citizens of the Republic of Belarus, who live in the same administrative territorial unit (Article14), and the possession by the community applying for registration of a legal address (which may not be a private house). This makes all communities illegal who do not: have 20 citizen members in the same place willing to be identified as founders; have a legal address; who do not have the resources to follow the state's complex bureaucratic procedures; or who – as is their right in international human rights law – choose not to register. These requirements also discriminate autonomous communities which are not part of already established national religious associations.[23]

Significantly, the 2002 Law on Freedom of Conscience also removed the requirement for permissible limitations on freedom of religion and belief to conform with the requirements of ICCPR Article 18 paragraph 3.

The 2002 Law on Freedom of Conscience also limited the rights of the foreign citizens, including those who permanently live in Belarus, to be founders (Article 13, 14) or leaders (Article 13) of religious organisations. Foreign citizens can only exercise freedom of religion and belief if they are both invited by a state-registered religious association

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[22] Between 2010 and 2014 Forum 18 counted seven cases. http://www.forum18.org/archive.php?article_id=1997 [accessed 4 Jan. 2018].

[23] Шавцова, Дина, "Вопросы практики регистрации автономных (вне религиозных объединений) религиозных общин", http://forb.by/node/568 [accessed 4 Jan. 2018].

(Article 29, paragraph 2), and authorised by a special Standing Order[24] of the state's Plenipotentiary for Religious Affairs. This permission is always geographically limited and can be arbitrarily granted or refused by the Plenipotentiary without giving any reasons for the decision. This allows the Belarusian government to have total arbitrary control of the exercise of freedom of religion and belief by foreigners, as well as to control and restrict religious bodies' right to choose their personnel freely. The arbitrary nature of the state's powers is demonstrated by the case of the Belarusian Orthodox Church, which since the end of 2013 has been led by Russian citizen Metropolitan Pavel (Ponomarev). This directly violates Article 13 of the 2002 Law, but in contrast to other recent examples[25] the government has neither deported him nor threatened to liquidate his Church.

The 2002 Law on Freedom of Conscience also limits several possibilities to state-registered religious associations (i.e., groups of state-registered religious communities), and not to individual state-registered religious communities. These include to establish monastic communities, spiritual educational establishments, media and publishing houses, etc. (Article 15, paragraph 6), to invite foreign priests and ministers to Belarus (Article 29, paragraph2). To found a religious association there must be 10 state-registered religious communities of the same denomination, at least one of which has to have had state registration for at least 20 years.

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[24] Положение о порядке приглашения иностранных граждан и лиц без гражданства в Республику Беларусь в целях занятия религиозной деятельностью // Постановление Совета Министров Республики Беларусь от 30.01.2008 № 123.

[25] See, e.g., in the case of a Polish Catholic priest Forum 18, 5 June 2017. http://www.forum18.org/archive.php?article_id=2284 [accessed 4 Jan. 2018] as well as the cases of Catholics, Baptists, the Church of Jesus Christ of Latter-day Saints (Mormons), Jews and Muslims Forum 18, 7 Dec. 2016. http://www.forum18.org/archive.php?article_id=2237 [accessed 4 Jan. 2018].

That denies many possibilities to non-state-registered communities, as well as small, new or autonomous communities.[26]

The 2002 Law on Freedom of Conscience also restricts meetings for worship to buildings which are registered with the state as a house of worship. Meetings (however small) or other events outside of these state-registered buildings can only take place if permitted by the state under the Law on Public Events[27] (Article 25, paragraph 5). Meetings for worship in private homes can only happen if they are neither regular nor large scale (Article 25, paragraph 2). These restrictions apply to both registered and non-registered religious organisations and there have been cases of administrative prosecutions for this "offence".[28]

For Belarus' second UPR cycle, Belarus's human rights defender groups issued an alternative report[29] in 2014. They highlighted the challenges and recommended the following changes to bring the legislation in line with the international standards:

1. To abolish obligatory state registration of religious organisations.

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[26] This problem was addressed in the case of *Malakhovsky, Pikul and others v. Belarus*, *Malakhovsky, Pikul and others v. Belarus*, Communication No. 1207/2003, U.N. Doc. CCPR/C/84/D/1207/2003 (2005); *Pivonos v. Belarus*, Communication No. 1830/2008, U.N. Doc. CCPR/C/106/D/1830/2008 (2010); one complaint is still undergoing the process: *Borovik v. Belarus*, Communication No.2695/2015.

[27] Закон Республики Беларусь "О массовых мероприятиях в Республике Беларусь" от 30.12.1997 № 114-З с изменениями и дополнениями от 8.11.2011.

[28] Шавцова, Дина. "Практика привлечения к административной ответственности за нарушение порядка проведения массовых мероприятий в отношении религиозных общин". http://forb.by/node/400 [accessed 4 Jan. 2018].

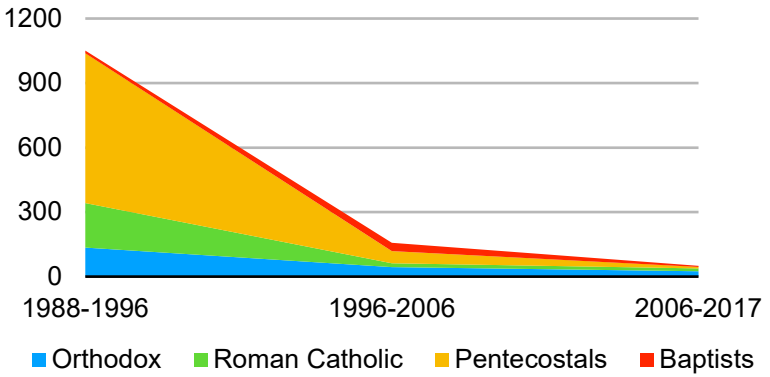
[29] Альтернативный доклад по 2 циклу Универсального периодического обзора (Беларусь), http://forb.by/node/437 [accessed 4 Jan. 2018].

2. To abolish obligatory licensing of religious events in buildings lawfully owned by religious bodies.
3. To allow all types of religious organisations to establish mass media outlets.
4. To ensure unrestricted freedom of religion for non-Belarusian citizens who are lawfully live or stay in Belarus, which includes their right to found and head religious organisations, to carry out religious activities allowed by international law, and to teach in religious institutions of education.
5. To repeal all legal provisions, which to limit the activities of religious organisations to within the territory of a particular administrative territorial district.

Belarus' laws restrict human rights including freedom of religion and belief, but the majority of religious communities in Belarus do not see this as a major problem. In the second decade since the 2002 Law a new pattern of the political regime's restrictions is observable. Although still restrictive character, the excessive governmental control in the religious sphere is applied under a kind of unspoken and unwritten social contract model.[30] The unelected political regime tries to maintain its arbitrary power without causing severe unrest in society, so the numbers of highly

[30] The model of the social contract between the government and specific social groups was introduced by leading Belarusian political scientists to explain why, despite restrictions on human rights and freedoms, Belarusian society does not produce strong protest movements. According to the research of the Belarusian Institute for Strategic Studies such a contract in Belarus is based on the following implicit governmental proposal: "Our state secures civil peace and political stability, which justifies limitations on some civil freedoms": Vital Silitski, "From Social Contract to Social Dialogue: Some Observations on the Nature and Dynamics of Social Contracting in Modern Belarus". In *Social Contracts in Contemporary Belarus*, edited by Kiryl Haiduk, Elena Rakova and Vital Silitski. Minsk: Belarusian Institute for Strategic Studies, 2009, 160.

repressive cases of freedom of religion and belief violations have decreased. The government's restrictions on human rights are mainly maintained through routine bureaucratic means and the partial or non-enforcement of the existing repressive laws. Religious organisations mainly collaborate with the unelected political establishment and by conforming to the government's "rules of the game" have – as the government wants – minimised their potential to be sources of protest against the authorities' unjust actions.[31]



[31] See more, Natallia Vasilevich and Dina Shavtsova. "Freedom of religion in Belarus 2015-2016: new trends, Report at the European Religious Liberty Forum, 17-19th March, Istanbul". https://www.academia.edu/33228450/Natallia_Vasilevich_Dina_Shavtsova_Freedom_of_religion_in_Belarus_2015-2016_new_trends_Report_at_European_Religious_Liberty_Forum_17-19_March_2017_Istanbul [accessed 4 Jan. 2018].

	1986	1989	1990	1991	1996	2006	2017	1989-1996	1996-2006	2006-2017
Orthodox	369	399	609		938	1349	1681	135%	44%	25%
Roman Catholic	86	121	162	278	372	438	496	207%	18%	13%
Pentecostals		39			311	488	521	697%	57%	7%
Baptists		171			192	265	280	12%	38%	5%
Data source	See: *footnotes 1-4*							© Natallia Vasilevich		

5

ESTONIA

Merilin Kiviorg

Legal Basis of Freedom of Religion or Belief

The current legal and political framework of religion in Estonia was designed by the Constitution adopted by the referendum of 28 June 1992[1] after the collapse of the Soviet Union.[2] This Constitution meets entirely the standards of freedom characteristic of western democracies, European and international law and was a clear indication of how Estonia wanted to identify itself after years of Soviet occupation. Estonia started to re-build its legal order on the principle of restitution (before Soviet occupation Estonia was an independent state between 1918-1940), while at the same time acknowledging the changes over time in the European legal order and thinking. In drafting the Constitution, great attention was paid to fundamental rights. They have a prominent position in the Constitution, being set forth in the Chapter II. International treaties, the European Convention for Human Rights and Fundamental Freedoms (ECHR) and

[1] RT I 1992, 26, 349.

[2] This chapter is written with support from the Estonian Research Council Institutional Grant No. IUT20-50 "The Evolution of Human Rights Law and Discourse in the Russian Federation, and its Interaction with Human Rights in Europe and the World".

constitutions of other democratic states were taken as models for drafting the chapter on fundamental rights. The following will first give a description of sources of law on religion and then address main legal provisions and principles determining freedom of religion or belief in Estonia.[3] The sources of the law on religions in Estonia are as follows:

> (1) Provisions set forth in the Constitution.
>
> (2) Provisions set forth in international law and law of the European Union.
>
> (3) National law (the Non-profit Organizations Act, the Churches and Congregations Act and the other acts directly or indirectly regulating the individual and collective freedom of religion).
>
> (4) The interpretation of fundamental freedoms and rights in the administration of justice (including decisions of the European Court of Human Rights and the European Court of Justice).[4]

The Estonian Constitution expressly provides protection to freedom of religion or belief. Article 40 sets out that:

> Everyone has freedom of conscience, religion and thought. Everyone may freely belong to churches and religious associations. There is no state church.
>
> Everyone has the freedom to practise his or her religion, both alone and in with others, in public or in private, unless this is detrimental to public order, health or morals.

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[3] For the comprehencive overview of freedom of religion or beleif in Estonia see: Merilin Kiviorg, *Law and Religion in Estonia*. The Netherlands: Kluwer Law International, 2016.

[4] See also Kalle Merusk and Raul Narits, *Eesti Konstitutsiooniõigusest*. Tallinn: Juura, 1998, 169.

Article 40 is deemed to protect a wide variety of beliefs. Even during a state of emergency or a state of war, rights and liberties in Article 40 of the Constitution may not be restricted (Article 130 of the Estonian Constitution). The religious freedom guarantee of Article 40 of the Constitution has to be interpreted in conjunction with the other articles of the Constitution as one reflects on freedom of religion or belief. Article 41 on the freedom of belief and Article 42 on the privacy of one's religion and belief add strength to the commitment to freedom of religion. In addition, other constitutional provisions complement basic freedom of religion. For example, Article 45 concerning the right to freedom of expression, Article 47 concerning the right to assembly, and Article 48 concerning the right to association: each provides specific protection for different aspects of religious freedom. There are three main constitutional principles that are relevant to protection of religious freedom in Estonia, namely: state neutrality, prohibition of discrimination and autonomy of religious communities.

The right to freedom of religion is also protected by international law. Article 3 of the Estonian Constitution stipulates that universally recognised principles and standards of international law shall be an inseparable part of the Estonian legal system. They are superior in force to national legislation and binding for legislative, administrative and judicial powers. It should be noted that Article 3 incorporates both international customary norms and general principles of law into the Estonian legal system. The international treaties (ratified by Parliament) are incorporated into the Estonian legal system by Article 123(2) of the Constitution. Article 123 states that if Estonian legal acts or other legal instruments contradict foreign treaties ratified by the *Riigikogu* (Parliament), the provisions of the foreign treaty shall be applied. Estonia is a party to most European and universal human rights instruments[5] and

[5] *Inter alia*, the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), and the International Covenant on Civil and

a member of many international organizations, including the United Nations, Council of Europe and Organization for Security and Co-operation in Europe (OSCE), and has ratified key conventions protecting freedom of religion or belief.

In addition to constitutional law and international human rights law, Estonia regulates freedom of religion and belief and church-state relations by a number of statutes and regulations. The principal statutes regulating church-state relations are the Non-Profit Organisations Act (*Mittetulundusühingute seadus*)[6] and the 2002 Churches and Congregations Act (*Kirikute ja koguduste seadus*, CCA).[7] There are many other acts directly or indirectly regulating freedom of religion of individuals and communities. For example, the acts concerned with tax exemptions, education and criminal liability.[8] In Estonia church-state relations are governed not only by general laws but also by formal agreements that are negotiated directly between the government and religious institutions.

Institutional Framework

Both individual and collective freedom of religion or belief is protected under Estonian laws. Similar to international instruments, the Constitution and the CCA protect both the right to have/choose and the

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Political Rights (1966). European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 Nov. 1950, entered into force 3 Sep. 1953) 213 UNTS 221 (ECHR); International Covenant on Civil and Political Rights (adopted 16 Dec. 1966, entered into force 23 Mar. 1976) 999 UNTS 171 (ICCPR).

[6] RT I 1996, 42, 811.

[7] RT I 2002, 24, 135.

[8] Translation of the texts of selected Estonian legal acts can be found at https://www.riigiteataja.ee/en/ [accessed 15 Sept. 2018]. This is an official webpage of the State Gazette (*Riigi Teataja*) where all the laws and other legislative acts of Estonia are electronically published.

right to manifest (both individually and collectively) one's religion or belief. The CCA contains detailed provisions on individual freedoms, membership in the religious associations and sets forth requirements for registration and activities of religious communities.

Article 40 of the Constitution stipulates the principle of institutional separation of the State and religious associations ('There is no State Church'). This has not been interpreted as a rigorous policy of non-identification with religion. The cooperation between the State and religious associations in areas of common interest is an established practice today. The Estonian Constitution does not make any reference to secularism as a constitutional principle. The stipulation 'There is no state church' has been interpreted as a stipulation of the principle of neutrality. The principle of neutrality in the Estonian Constitution is a reflection of the neutrality and impartiality principle adopted by the European Court of Human Rights, which should be understood as an obligation of the state to be a neutral and impartial organiser of various beliefs. This principle goes hand in hand with the principle of non-discrimination.[9] Estonian laws respect autonomy of religious organisations leaving certain room for these organisations to organise and govern themselves in accordance with their own teachings and structures. The legal capacity of a religious association commences with its entry in the register of religious associations. The law does not prohibit the activity of religious associations which are not registered. Rather, the main disadvantage for these unregistered entities is that they cannot present themselves as legal persons, and therefore cannot exercise the rights or seek the protections accorded to a religious legal entity.

[9] Rait Maruste, *Konstitutsionalism ning põhiõiguste ja – vabaduste kaitse*. Tallinn: Juura 2004, 522.

Current Challenges

When the 1992 Constitution was created there were hardly any debates over the text or meaning of religious freedom articles and State and religious communities' relationship. Other issues were more imminent for restoring Estonian Republic after the collapse of the Soviet Union. This kind of neglect in constitutional thinking has affected State and religious communities up to this date. However, the relationship between State and religion has been gradually evolving through the heated debates over co-habitation law, religious education or education about religions, preferential treatment of Christian communities, financial support, property matters, and more recently over religious symbols, application of anti-discrimination laws, artistic expression versus religious freedom and migration. Most importantly, however, this relationship has evolved through public debates over Estonian values and identity in circumstances where only 29% of the population (those aged 15 and above) considers themselves to adhere to any creed[10] and according to some recent surveys 58% (of people questioned) say they have individual beliefs non-dependent on any religious community.[11]

Saying that, relationships between religious communities, state and society have been mostly amicable. Religion is primarily a private matter and religion does not play a major role in public debates or in politics. There have also been hardly any court cases involving individual or collective religious freedom. These few cases have, for example, involved autonomy of religious communities,[12] rights of prisoners to religious

[10] Population and Housing Census 2011. http://www.stat.ee/phc2011 [accessed 1 Feb. 2018].

[11] "Uuring: eestlastel on oma usk" *Äripäev*, Tallinn, 22 Apr. 2014.

[12] Supreme Court of Estonia, Case No 3-4-1-1-96, 20 Dec. 1996.

freedom,[13] property and legal personality/registration disputes,[14] conscientious objection to alternative military service[15] and protection of sacred places.[16] One of the most recent cases in the Supreme Court of Estonia concerned denial of international protection/refugee status to a person who claimed he was being religiously persecuted in Uzbekistan due to alleged membership in the Hizb ut-Tahrir.[17] The refusal was considered justified on national security grounds. Estonia is not yet facing any of the challenges related to the growing Muslim communities experienced in other European countries. However, this does not mean that there is currently no national debate relating to the possible effects of it. Besides legitimate concerns over the capability of the state and society to cope with increasing religious diversity and possible challenges to security, the theme has also been engaged by populists and far right groups for their political purposes. The latter resembles tendencies in other European states. The latest statistics, for example, have shown significant increase in support of the far-right populist political party the Conservative People's Party of Estonia (EKRE). The rise of populism and far-right movements should be a concern for anybody who takes human rights for everybody seriously.

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[13] E.g., Tartu District Court, Case No 3-16-176, 15 Dec. 2016; Tartu district Court, Case No 3-14-52503, 21 Jun 2016; Tartu District Court, Case No 3-11-2943, 15 Nov. 2013.

[14] Supreme Court of Estonia, Case No 3-7-1-2-1023-13, 10 Feb. 2014. The majority of cases concerning religious communities in lower courts have been related to land reform and restoration of illegally expropriated property as a result of the land reform initiated at the beginning of the 1990s.

[15] Supreme Court of Estonia, Case No 3-1-1-82-96, 27 Aug. 1996.

[16] Supreme Court of Estonia, Case No 3-3-1-39-07, 17 Oct. 2007.

[17] Supreme Court of Estonia, Case No 3-17-1026, 1 Oct. 2018.

6

NORWAY

Gunnar Heiene

Religious Freedom in Norway

In Norway, religious freedom is considered to be an important value in a modern society, although the dominant Norwegian Lutheran church has been defined as the state church of Norway with special privileges until recently. In the Norwegian constitution of 1814, the right to religious freedom was not guaranteed, but throughout the 19th century important steps were taken towards securing more freedom for religious groups outside the formal congregations of the Church of Norway. In 1845, the Act relating to Dissenters secured the right to withdraw from the state church and to establish independent Christian communities. In 1851, also Jews were given this possibility, and in 1891 non-Christian religions were allowed. Jesuits, however, were not allowed access to Norway until 1956.[1]

[1] Ingunn Folkestad Breistein, *Har staten bedre borgere?: Dissenternes kamp for religiøs frihet 1851-1969.* Trondheim: Tapir, 2003; Ulla Schmidt, "State, Law and Religion in Norway". *Nordic Journal of Religion and Society* 24:2 (2008) 137-153.

This chapter is a status report on religious freedom in Norway today, especially with focus on important changes in the relationship between state and church during the last 10 to 15 years.

Lutheran Theology, Church and Society

There are important similarities between the Nordic countries when it comes to the position and role of the church in society. The Lutheran reformation contributed to important changes in religious life within the church, but from our perspective today, we can also see how the reformation has contributed to societal and political ideals in the Nordic countries. For example, the role of Lutheran theology and church life for the establishment of the "Nordic" welfare state has been underlined by social scientists.[2]

An important challenge for the church during the last decades is the process of secularisation, which has diminished the role of religion both socially and individually. Secularisation has been interpreted as a necessary consequence of societal pluralism, and also in Norway, the relationship between state and church has undergone important changes during the last decades. These changes also have important implications for the status and role of religious freedom within the society.

State, Church and Religion in Norway – Recent Developments

From 1 January 2017, the status of the Church of Norway has changed in an extensive way. In 2016, the Norwegian Parliament made a decision

[2] Anne Birgitta Pessi, Olav Helge Angell and Per Pettersson, "Nordic Majority Churches as Agents in the Welfare State: Critical Voices and/or Complementary Providers". *Temenos* 45:2 (2009) 207-234.

about the changed situation for the church. The church is no longer a "state church", and the General Assembly of the church has taken over the responsibilities that were earlier held by the state.

These fundamental changes were prepared by a decision in the Norwegian Parliament May 2012 to abolish the former paragraph 2 of the Constitution, which stated that the Evangelical-Lutheran Church remained the official religion of the state. Instead, a new value paragraph was introduced, saying that Norway's values are based on its Christian and humanist heritage. Additionally, the new paragraph stated that the Constitution shall ensure democracy, rule of law and human rights.[3]

These changes should be seen against the background of important societal changes during the last decades. In a more pluralistic society, the claim for more equal treatment of different religious groups has been strongly advocated, and religious freedom, strongly anchored in the human rights, has been supported by most people, regardless of religion or beliefs. However, the Church of Norway is still mentioned in a new Article 16 in the Constitution: "All inhabitants of the realm shall have the right to free exercise of their religion. The Church of Norway, an Evangelical-Lutheran church, will remain the Established Church of Norway and will as such be supported by the State".[4] The Constitution also states in Article 4 that "The King shall at all times profess the Evangelical-Lutheran religion", and national values shall remain anchored in Norway's Christian and humanistic heritage. The Church of Norway is no longer a "state church", but still the state has a special relation to this church as a "folk church". The law also specifies the right

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[3] Dag Thorkildsen, "The Role of the Church in Contemporary Norway: Changed Relations between State and Church". *Kirchliche Zeitgeschichte* 25:2 (2012) 272-292.

[4] English translation of the Norwegian Constitution found at: https://www.stortinget.no/globalassets/pdf/english/constitutionenglish.pdf [accessed 24 Oct. 2017].

of individuals over the age of 15 to choose or change their religion. Until 1 January 2017, the Church of Norway staff remained public employees.

Firstly, these changes mean that the state no longer holds an official religion. Secondly, they allow the Church of Norway to have a more independent position towards the state. The bishops and ministers are no longer state employees, depending upon the state's department for church affairs, and the Church of Norway has become a legal entity on its own.

Nevertheless, the state still holds some power in relation to the church. According to the revised Constitution, the structure and order of the Church of Norway will still be decided legally, and although it seems likely that this influence from the state will gradually diminish, the legal power over the Church of Norway will probably continue to be stronger than in relation to other religious and life stance communities.[5]

Pluralism and Freedom

In pluralist societies, there are different ways of organising the relationship between state and religion. In her book on politics of religion, Ingvill Thorson Plesner, a Norwegian researcher who has been actively involved in the debates about church and society in Norway during the last two decades, presents five different models, the *atheist* state model, the *separation* model, the *pluralist* model, the *establishment* model, and the *confessional* state model.[6]

According to Plesner, the *establishment* model is the dominant model in the Nordic countries today, including Norway. According to this model, one particular religion or confession has a privileged position in

[5] Ulla Schmidt, "Styring av religion: Tros- og livssynspolitiske tendenser etter Det livssynsåpne samfunn". *Teologisk Tidsskrift* 4:3 (2015) 218-237.

[6] Ingvill Thorson Plesner, *Religionspolitikk*. Oslo: Universitetsforlaget, 2016, 61-84; Ingvill Plesner, "Law and Religion in Norway". In *Encyclopediae on Law and Religion,* edited by Gerhard Robbers and W. Cole Durham. Leiden: Brill, 2016.

relation to the state, but still, freedom of religion or belief is secured for all individuals and groups. In principle, there is a division between the state and the national church with regard to areas of competence and responsibility.

In 2013, a public report on state policy on religion and other "life stances" was published with the title "Det livssynsåpne samfunn" (a society open for different life stances).[7] This concept has played an important role as a term defining the society's attitude to religion and world views in a pluralist context. The report claims that this concept should not be interpreted as "neutrality" but as "pluriformity". The moderator of the report, professor Sturla J. Stålsett, underlines that the report is based on a vision of a society with considerable space for faith and world views where strong commitments are welcomed, and at the same time should meet criticism and challenges. He uses the concept of "folk church" which has played an important role in Norwegian discussions about the role of the church in the modern pluralist society. "The people of the folk church can be interpreted both as *demos* and as *plebs*", Stålsett says, claiming that we should see how close the two aspects of the church as "open" and "serving" are related to each other.[8]

The "Post-secular" Society

During the last decades, the debate about secularisation processes and the increasing pluralism within the Norwegian society have been important.

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[7] *Det livssynsåpne samfunn – En helhetlig tros- og livssynspolitikk*. Utredning fra utvalg oppnevnt ved kongelig resolusjon 25. juni 2010. Avgitt til Kulturdepartementet 7. januar 2013. https://www.regjeringen.no/no/dokumenter/nou-2013-1/id711212/sec1 [accessed 25 Oct. 2017].

[8] Sturla Stålsett (2013), "Folkekirke i et livssynsåpent samfunn: kirke for alle? Økende tros- og livssynsmangfold som utfordring til Den norske kirkes selvforståelse". In *Folkekirke nå!* edited by Stephanie Dietrich et. al. Oslo: Verbum forlag, 2015, 205-213.

During the last years, however, the idea that the western world is moving towards a "post-secular" age, has found considerable support. In Norway, the concept of a society which is open to different world views, has been used in official documents from the last period of changes in the state – church relations. During the last decades, religious minorities have become more visible, partly as a result of the many new religious buildings like mosques and temples. Through different religious rules about food, prayer times and habits, pluralism within the Norwegian society has reached a level of considerable importance, and the need for interreligious dialogue is obvious.[9]

As a result of this new visibility for different religions, the concept of the "post-secular" society has been used to characterize new tendencies in western societies where "secularisation" and "pluralism" have been used to describe the development towards societies where the role of religion in the public sphere has diminished. The concept has been used by Jürgen Habermas in his reflections during the last decade about the role of religion in the public sphere. In the post-secular society, a complementary learning process between religious and secular mentalities is required. Tolerance between believers and non-believers is imperative in a liberal political culture.[10]

Habermas sees constitutional freedom of religion as a relevant response to the challenges from religious pluralism. The secular character of the state is a necessary, but not sufficient condition for the religious

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[9] Oddbjørn Leirvik, "Policy toward religion, state support and interreligious dialogue: The case of Norway" In *Studies in Interreligious Dialogue* 25:1 (2015) 92-108, 93.

[10] Jürgen Habermas, "Notes on a post-secular society". http://www.signandsight.com/features/1714.html [accessed 23 Oct., 2017]; Jürgen Habermas, "Religion in the public sphere". *European Journal of Philosophy* 14:1 (2006) 1-25.

freedom of all citizens. The conflicting parties should learn to take the other's perspective with regard to what should be tolerated or not.

According to Habermas, it is important to notice that religion plays an important role in the life of the believer, and that religious belief belongs to everyday life. If the liberal state accepts that for many people, religion affects all dimensions of life, also their social and political existence, it would be a contradiction if the state on the one hand defends the right to religion, but on the other hand claims that all citizens have to justify their political statements without referring to their world views. This claim should only be posed to those persons who should respect neutrality as part of their public position. The institutional separation between religion and politics in the liberal state should not be allowed to create a mental and psychological burden for citizens holding a personal belief. The claim that religious argument should be "translated" to secular arguments in the political discourse, does not mean that a person's identity is split in two parts, a public and a private. We should accept religious language also within the political sphere when a religious person is unable to find secular "translations" for political positions. The democratic state should not "preemptively reduce the polyphonic complexity of the diverse public voices," Habermas claims.[11]

Religion in the Public Sphere

According to Habermas, opening up for religious voices in the political debate is not an extraordinary exception. On the contrary, the liberal state should encourage many different voices in the public sphere, also religious voices. Even secular participants in the public debate could learn from religious contributions, particularly since religious traditions are able to articulate moral intuitions, especially on issues revealing

[11] Jürgen Habermas, "Notes on a post-secular society". http://www.signandsight.com/features/1714.html [accessed 23 Oct. 2017].

vulnerable aspects of society. Still, Habermas claims that a process of translation is necessary on the parliamentary level, but this should include cooperation between religious and non-religious citizens. Secular citizens should enter this dialogue with an open mind.

The religious traditions should therefore be challenged to take part in a process of hermeneutical self-reflection. Religious citizens should reveal an open attitude towards other world views, they must accept a division between secular and religious knowledge, and they should accept the priority of secular arguments in the political arena. But similar claims should be addressed to secular citizens, since a secularistic attitude is no good basis for cooperation with religious fellow citizens. Tolerance is not enough; secular citizens should also be able to transcend a secularist understanding of modernity in order to avoid an understanding of religious traditions and communities as archaic of premodern remnants. Such views could lead to a concept of religious freedom as restricted to conservation of a species threatened by extinction. Therefore, a self-critical attitude to the limitations of the secular reason is needed. This is necessary to fulfill the "complementary process of learning" both for religious and secular citizens.

Lutheran Perspectives

In his article about political theology in a Nordic post-secular situation, the Finnish ethicist Tage Kurtén argues that the Lutheran distinction between the two kingdoms should be brought into the discussion about the views expressed by Habermas, underlining the need for opening up for a public debate where citizens must be able to listen to all kinds of arguments, also religious arguments. He claims that the sharp division in modernity between state and church, between the secular and the religious, disappears in a post-secular context:

> Modernity's objective of political consensus on rational, theoretical (and secular) grounds will become impossible even as an ideal. The radical consequences of post-secularity must be taken more seriously.[12]

According to Kurtén, the claim that religious arguments must be translated to a common secular language to enable a political conversation in the post-secular society must be rejected. In our situation, the connections between the religious and the secular have their place mainly within each individual, acting as Christian citizens in a democratic state. He claims that the Lutheran doctrine on the two kingdoms opens up for political deliberations outside the church. Both the Lutheran churches and the state have to accept a multicultural and multi-religious discourse, based on a vision of a "common humanity". In a situation where the traditional state-church relationship has undergone considerable changes, this could be a guiding principle for the churches' relationship to the political authorities and the important ethical challenges in a globalised world.

[12] Tage Kurtén, "Political theology in a Nordic post-secular setting". *Studia Theologia* 67:2 (2013) 90-109, 102.

7

FRANCE

Frédéric Rognon

The current situation of religious freedom in France is the fruit of a rather long and specific history. We will retrace the principal stages in this history.

Legal Basis

The first breach in the imposition of religious homogeneity at the heart of the Catholic Kingdom that is France, the "firstborn daughter of the Church," is situated at the very end of the 16th century. After eight wars of religion which ravaged the country from 1562 to 1598, reaching a climax in the emblematic event of the massacre of Saint Bartholomew in August 1572 (with perhaps 10,000 Protestants killed), the Edict of Nantes is signed in 1598, finally sealing a religious peace. It will last 87 years, until its Revocation in 1685. But it would be illusory to believe that this audacious innovation regulates religious plurality in an egalitarian fashion until the instauration of the *laïcité* of the 20th century: Protestants (10% of the population) are tolerated, in a Catholic Kingdom. They are, Patrick Cabanel dares to say, the "dhimmi of the West".[1] And above all, after the

[1] Patrick Cabanel, *Histoire des protestants en France (XVIe – XXIe siècle)*. Paris: Fayard, 2012, 345.

assassination of Henri IV in 1610, the Edict will not cease to be eaten away, circumvented, unravelled, and finally scorned. This does not imply that the 17th century is any less a period of influence for French Protestant thought – its "golden century", as it were.

The Edict of Nantes effectively assures Protestants a total freedom of conscience and guarantees them a relative freedom of worship (the freedom to assemble for worship is denied them in Paris and in cities which were the seats of bishoprics); eighty "places of security" are attributed to them, defended by a garrison maintained by the king; public space, the calendar and the right to marry and remain Catholic; the reformers can train pastors and lay officers; they have access to all public offices and appointments, and teaching and political assemblies are freely open to them, which gives them the opportunity to exercise a certain social influence. As for the Jews (less than 1% of the population), they remain excluded from a certain number of sectors of activity, the victims of constant provocations and, at times, of real persecutions.

The Edict of Nantes is revoked in 1685, marking what seems to be a major regression in religious freedom. From the beginning of the 1680s, a long series of professions are forbidden to Protestants: clerk, attorney, prosecutor, bailiff, assessor, lawyer, bookseller, printer, health professions, and so forth. Even without the Revocation of the Edict of Nantes, the economic, social, and political influence of Protestants would have thus been reduced to nothing. The Edict of Fontainebleau, which revoked the Edict of Nantes in 1685, bans all exercise of reformed worship, orders the destruction of all Protestant churches, makes baptism and Catholic religious instruction obligatory, outlaws all Protestant schools, gives pastors the choice between exile and abjuration (one in five will convert, almost all the others will flee towards *Le Refuge*: England, United Provinces, Germany, Switzerland), and forbids laypersons from leaving the Kingdom. France, therefore, effectively becomes an open-air prison for Protestants, where they will live as orphans, without pastors or

churches. The 18th century thus renews the religious homogeneity of the 16th century, after the parenthetic 17th, almost unique in the world in this era (outside of the United Provinces), which honoured and legitimated the principle of alterity. Religious freedom is scorned for the Jews (confined in the ghettos) and for protestants (crushed in 1704 and 1710 during the war of the Camisards, terrorised by the Calas Affair in 1762), despite progress of the idea of tolerance among the philosophers of the Enlightenment, beginning with Voltaire (whose *Treatise on Tolerance* appeared in 1763).

On the eve of the French Revolution, however, mentalities change. In 1787, King Louis XVI signs an Edict that will be described as the "edict of tolerance," but which is, in reality, heavily restrictive: it permits the establishment of a civil state for all non-Catholics (Protestants, Anabaptists, and Jews), and thus the legalisation of marriages, but it does not establish freedom of worship. It is thus the Revolution which marks the veritable caesura. The Protestants take part in the Revolution, and the pastor Rabaut Saint-Étienne, deputy of the Third Estate to the general States for the administrative division of Gard of March 1789, will be their spokesperson. He works so that the Declaration of the Rights of Man and of the Citizen will affirm, in article 10, the freedom of religion; the formulation is nevertheless the fruit of a compromise with forces hostile to tolerance: "No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law"[2]; thus the freedom of worship, notably, remains suspended due to the appraisal which the power will make of this potential trouble. At the end of 1789, the National Constituent Assembly grants access of non-Catholics to all positions of employment. The discussion concerning the status of Jews regarding

[2] Translator's note: English translation taken from "Declaration of the Rights of Man, 1789," The Avalon Project – Documents in Law, History, and Diplomacy. http://avalon.law.yale.edu/18th_century/rightsof.asp [accessed 2 Mar. 2017].

French citizenship sparks a debate which lasts three days, from the 21st to the 24th of December; finally, the decree signed on 28 January, 1790 limits French citizenship to Sephardic Jews (who number less than 5,000), thereby refusing citizenship to Ashkenazi Jews (more than 30,000), who are considered as non-assimilated. The decree of emancipation which recognizes the French citizenship of all Jews in France is adopted on 27 September, 1791. Meanwhile, Rabaut Saint-Étienne was elected, for fifteen days, as president of the National Assembly: an old, clandestine pastor thus becomes the second personage of the State, after the king. He participates in the elaboration of the Constitution of 1791. He will, notwithstanding, be guillotined during the Terror on 5 December, 1793. In the span of a century, Protestants were thus exiled or converted in mass: they represent no more than 1.5% of the population. It is the concordatory texts of 1802, and notably the Organic Articles enacted by Napoleon, which offer Protestants total recognition and freedom of worship, to the point of juridical equality with Catholics. Jews will have to wait until 1908 for two decrees organising their worship on the basis of institutions which unify (and somewhat centralise) their community: the regional consistories, depending on the central Israelite Consistory of France. The fall of Napoleon will not affect these re-organisations.

The religious freedom finally recognised and guaranteed will not forbid, throughout the 19th century, movements of antisemitism (of which the two defining moments will be, in 1886, the publication of *Jewish France* by Édouard Drumont, and of course, from 1894 to 1906, the Dreyfus Affair), but equally of anti-Protestantism.[3] This explains why these two religious minorities welcome with relief the law of the separation of Church and State, in 1905, which brings a definitive halt to dreams of hegemony and of control over the State by the Catholic Church.

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[3] See Jean Baubérot and Valentine Zuber, *Une haine oubliée: L'antiprotestantisme avant le "pacte laïque" (1870-1905)*. Paris: Albin Michel, 2000.

Protestants, incidentally, bring a major support to the elaboration of this law, with Ferdinand Buisson presiding over the parliamentary commission charged with its implementation.

Institutional Framework

The French *laïcité*, coming from the law of 9 December 1905, is not always well understood by foreigners. It must be said that the French themselves do not all agree on its interpretation, to the point that the sociologist Jean Baubérot was able to discern seven manners of comprehending it, from an "antireligious laicity" to a "concordatory laicity" (in force in Alsace-Moselle – which was German in 1905 – and in a good part of the overseas territories).[4] The law of 1905 nevertheless stipulates this, in its first article: "The Republic assures freedom of conscience. It guarantees the free exercise of worship limited only by the following rules in the interest of public order".[5] Article 2 specifies the content of the new relations between churches and the State:

> The Republic does not acknowledge, salary, or subsidise any form of worship. Consequently, from 1 January following the promulgation of this present law, all expenses related to the exercise of worship will be eliminated from the budgets of the State, the departments, and the communes. Nevertheless, all expenses relative to the services of the chaplaincy and destined to assure the free exercise of worship in public establishments such as high schools, secondary schools, primary schools, hospices,

[4] See Jean Baubérot, *Les sept laïcités françaises: Le modèle français de laïcité n'existe pas*. Paris: Éditions de la Maison des sciences de l'homme, 2015.

[5] Translator's note: For the texts of law quoted in this paragraph, I have modified a translation given on the French website "The Law of 1905," Virtual Museum of Protestantism. http://www.museeprotestant.org/en/notice/the-law-of-1905/, [accessed 3 Mar. 2017].

> sanctuaries and prisons, can be included in the aforementioned budgets.

The State thus disengages itself from all financial support to different worship services, with the exception of responding to spiritual needs of persons retained in enclosed places. No religion is thus privileged, none can be suspected of wanting to dictate the conduct of the State; consequently, freedom of worship, but also the free expression of each religion in public space, are guaranteed.

The French model of *laïcité*, the fruit of a long, complex, and conflictual history, is the base of a republican model concerned both to ensure religious freedom and to guard the State from all religious control. Outside of the period of Nazi occupation (1940-1944), which will orchestrate the persecutions against the Jews and the deportation of a quarter of their population, the law of laicity has played this role as regulator and protector of religious plurality until today. Three recent situations have nevertheless tested the very principles of religious liberty guaranteed and regulated by the laicity.

Current Challenges

The first, throughout the 1980's and 90's, concerns the phenomenon of heterodox religious movements qualified as 'sects'. The report of Alain Vivien,[6] in 1985, inaugurated a series of legislative measures and elaborations of lists of "sectarian groups" prosecuted by the court. Several of these movements will turn to the European Court of Human Rights to protest violations of religious freedom and to exercise their rights. The most important among these, the association of Jehovah's Witnesses, will finish in 2011 by winning their case, by being recognized as a form of

[6] See Alain Vivien, *Les sectes en France: Expressions de la liberté morale ou facteurs de manipulations? Rapport au Premier minister*. Paris: La Documentation française, 1985.

"worship," and by having the right to organize a prison chaplaincy financed by the State following the principles of the law of 1905.[7]

The second situation concerns the presence of Islam in France (with around 4,700,000 Muslims, roughly 7.5% of the population). After a certain number of incidents occurring in educational establishments, the exclusion of veiled women, and the tensions of the political debate surrounding laicity, a law was passed in 2004 forbidding the wearing of conspicuous religious signs in elementary schools, secondary schools and public high schools, yet authorizing discreet religious signs. This law is applied essentially to Muslim girls, forced to remove their veils in entering the door of an educational establishment, and authorised to put them back on upon leaving. In 2010, a second law is passed forbidding "the dissimulation of the face in public space": it thus excludes the wearing of the integral veil, or burqa. These two laws have been understood as an adaptation of laicity to a new context, and have been accepted by nearly all of the Muslim and Sikh communities in France.

Finally, a tragic situation: the very foundations of religious freedom are shaking after the extreme expressions of intolerance which France has experienced due to jihadist attacks in 2012 (Toulouse), 2015 (Paris, Saint-Denis) and 2016 (Nice, Saint-Étienne-du-Rouvray). The rise of Islamist radicalisation is met with Islamophobic reactions, which jeopardise the fragile equilibrium regulating religious plurality and assuring the freedom of worship and of expression of confessional convictions.

The current challenges pertaining to religious freedom which French society must surmount are related to the very comprehension of laicity, which no longer finds a consensus in the population; but also, and above all, to the invention of a new societal paradigm susceptible to promote a real mutual recognition between the communities, traditions and convictions destined to live together. With globalisation having induced

[7] *Affaire Association Les Témoins de Jéhovah c. France* (Requête no. 8916/05, 30 June 2011).

a vigorous mixing of populations, and thus of religions, their simple juxtaposition in reciprocal ignorance is no longer conceivable, when it is not a dangerous vector of intercommunity tensions: the price to pay to guarantee religious freedom for the long-term translates very well into encounter and mutual enrichment.

8

ITALY

Peter Ciaccio

Background

Italy is a Roman Catholic country. The situation is more complex that such an acknowledged and shared statement describes. In fact, in accord with the Augsburg principle *cuius regio eius religio*,[1] Italy's Roman Catholicity is the outcome of political decisions imposed by its rulers who were under the direct influence of the Popes.

Historical religious minorities in Italy were the Jews, whose presence in the peninsula precedes the Christian Era, and the Waldensians, a pre-Reformation pauperistic movement from the 12th century, that became a Protestant Church in 1532. Jews were confined in ghettos and discriminated, while Waldensians and other Protestants were persecuted and nearly wiped out from Italy.

In the 19th century things changed dramatically. At first Napoleon transformed all men to *citizens*, regardless of their faith, then in 1848 Waldensians and Jews were granted civil rights – as individuals, not as religious communities – by King Charles Albert of Savoy, whose Statute became the Constitution of the new Kingdom of Italy in 1861. The Roman

[1] Meaning "Whose realm, his religion": the ruler determined the religion of his or her subjects.

Catholic Church opposed the unification of Italy, for the risk of losing its earthly dominions and as the political ideology that animated the *Risorgimento* derived from Enlightenment. For the same reasons religious minorities considered the unification of Italy their occasion for emancipation.

When the Italian army conquered Rome in 1870, pope Pius IX excommunicated the Savoy family and urged Roman Catholics to boycott the new state. Several Catholic clerics who supported unification became Protestants. Foreign Protestants missions, mainly from Britain and the United States, were established in Italy, in open hostility with the Roman Catholic Church. Even if numerically and geographically grown, Protestants never really managed to represent a significant percentage of the Italian population. Italian governments tried hard to make peace with the Roman Catholic Church with no success until 1929.

In order to understand the juridical structure of religious rights in Italy today, it is important to focus on 1929-1930, when Mussolini – hailed for this as the "Man of Providence" by pope Pius X – signed the Concordat (a.k.a. Lateran Treaties) with the Roman Catholic Church and enacted the so-called "Laws on Allowed Forms of Worship", which remained binding even in post-Fascist Italy. The 1948 Constitution established new and democratic principles, but did not erase automatically all Fascist laws. According to the Italian juridical tradition, in fact, a law is valid until annulled by a new law or until proven wrong by a Court.

Matters of principle, such as human rights related issues, had to be addressed by the Republic through new specific and comprehensive bills. Nevertheless, this never happened to the issue of religious freedom, so the Laws on Allowed Forms of Worship are still valid for millions of people in Italy.[2] These Laws are grounded on the principle that religion is a

[2] The obviously totalitarian parts of such Laws had been erased by many judgements of the Constitutional Courts. Several times, this Court urged Parliament to issue a new comprehensive bill on the subject.

matter of security, and the Department for Allowed Forms of Worship – now called "Direzione centrale degli Affari dei culti", Central Office on Worship Affairs – refers to the Home Affairs Ministry.[3]

This monstrous combination of Fascist and Republican principles leads to the fact that, while enjoying a general freedom, in today's Italy individuals and faith communities are not treated equally, but are divided into at least three different categories, each one of them with particular rights and duties. These categories are the Roman Catholic Church, the faith communities that have signed a specific agreement with the Government, and those who do not have such an agreement.

The Roman Catholic Church

The 1948 Constitution reserves an entire article to the relationship between the Italian Republic and the Roman Catholic Church. Article 7 states:

> (1) The State and the Catholic Church are, each within its own order, independent and sovereign.
>
> (2) Their relations are regulated by the Lateran Treaties. Changes to the Treaties accepted by both parties do not require the procedure for constitutional amendment.

According to the Lateran Treaties, Vatican City was established as an independent state, elevating the Concordat from the level of an agreement between the Government and a group of its own citizens to one of an international treaty between sovereign states. Thus, rights and duties of Roman Catholics in Italy are regulated by an agreement with a formally foreign country. This carries serious consequences and allows a formally

[3] The Home Affairs Ministry is mainly competent for security and controls police and secret service.

foreign country to meddle into Italian matters of any kind.[4] Even if paragraph 1 states the reciprocal independency of Italy and the Catholic Church, there are points of contrast, the main one being art. 1 of the Concordat itself: "Italy acknowledges and reaffirms the principle of art.1 of the 1848 Kingdom's Statute, that the Roman, Apostolic and Catholic Church is the only state religion". Thus, even if the 1948 Constitution did not choose any state religion and art. 3 stating that: "All citizens have equal social dignity and are equal before the law, without distinction of … religion", its art. 7 puts a Concordat that declared one faith as the state religion at a Constitutional level. This was changed by the revision of the Concordat signed in 1984.

Another consequence of art. 7 is the fact that Roman Catholics, particularly clergy, were – in some respect, never formally but quite substantially – firstly Vatican citizens and secondly Italian citizens. Article 5(3) of the 1929 Concordat states that: "No apostate nor censored priest shall never be hired or maintained in a teaching position nor any [State-run] position that implies their contact with the public". This meant that in Republican Italy a priest who left the Roman Catholic Church could not be regularly hired as a teacher in public schools. So, while the Vatican State could veto certain Italian citizens to work in public posts, Italy had no interest nor right in influencing the policies of the Catholic Church.

It is important to understand this peculiar relationship between the Italian Republic and the Roman Catholic Church also to understand what separation of Church and State means in Italy, compared to other contexts. In fact, while in some Protestant or Orthodox countries the Government claims jurisdiction on Church matters, the opposite happens in Italy, where the Roman Catholic Church claims jurisdiction on State matters

[4] Moreover, no other religious community could be theoretically represented by a state.

(for example, marriage, divorce, family) that have consequences also on non-Catholic citizens.

As mentioned, the Concordat has been modified in 1984, in order to take into consideration the 1948 Constitution and the new Italian situation. What has not been changed is its legal status: the Concordat is an international treaty between two sovereign states. This privileged status protects the Concordat from any change a new Government wishes to make and from the possibility of a referendum.[5]

This creates a clear discrimination between citizens and faith communities in Italy, as any agreement between the government and a faith community may be challenged by a referendum with the exception of the agreement with the Roman Catholic Church. Moreover, such factual discrimination at a constitutional level may lead to the bizarre understanding that the dominant position of one faith community on the other ones is consistent with the Constitution's understanding of religious freedom.

As an example, in 2002 Monsignor Giuseppe Betori, secretary general of the Italian Bishops' Conference, declared during an audition at the Italian Parliamentary Committee on Constitutional Affairs, while debating on a proposed Bill of Religious Freedom that: "Equal freedom" for all confessions should not lead to "equal treatment".[6]

The "Agreements"

The second category regards faith communities that signed an *intesa* – agreement – with the Government, according to art. 8 of the Constitution.

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[5] Article 75(2) of the Constitution states: "A referendum is not permitted in the case of … authorization or ratification of international treaties".

[6] See Center for Studies on New Religions. http://www.cesnur.org/2002/lib_rel_3.htm [accessed 17 Sept. 2017].

> (1) All religious confessions are equally free before the law.
>
> (2) Religious confessions other than Catholic have the right to organize in accordance with their own statutes, in so far as they are not in conflict with Italian laws.
>
> (3) Their relations with the State are regulated by law on the basis of an agreement between the respective representatives.

Thus, paragraphs 1 and 2 state the principles, while paragraph 3 determines the way to implement religious freedom. Only in 1984, right after the signing of the new Concordat, the first Agreement was signed between the Government and the Union of Waldensian and Methodist Churches. The Agreement was then ratified by the Parliament and its legal status is a Parliamentary Bill.

The "Waldensian Agreement" was as model for the following ones. Its content is: freedom of the religion; economic allowance from State to Church – Waldensians and Methodists chose to reject the Government's offer to financially support the Church; chaplaincy for military, in hospitals, and in prisons; right not to attend Roman Catholic teaching in public schools; religious wedding; right for the church to be ordered according to its own rules; legal status of the Theological Faculty; freedom of expression, propaganda, and fundraising.

After the Waldensian Agreement, these other ones followed: Adventist Church, Assemblies of God (1988), Jewish communities (1989), Lutheran Church, Baptist Churches (1993), Orthodox Church (Ecumenical Patriarchate), Mormons, Apostolic Church, Buddhist Union, Hindu (2012), Soka Gakkai Buddhists (2016). There are at least three important confessions missing: Jehovah's Witnesses, Muslims, and Pentecostal Christians who are not part of the Assemblies of God.

The Government signed an Agreement with Jehovah's Witnesses in 2010, but Parliament never ratified it and currently it is not in the agenda, even if they are more numerous than many faith communities that

obtained the Agreement. The reason for this apparent rejection is that Jehovah's Witnesses are considered hostile by principle to state authority.

Regarding Muslims, there are no talks for an Agreement. Both Centre-Left and Centre-Right Governments argued that without a clear hierarchical structure it is not possible to sign an Agreement. Interestingly, one of the crucial characteristics of Islam – particularly of Sunni – is the equality of all adherents: this means that either Muslim change this or the implementation of art. 8 of the Constitution will never happen for them. This is quite a similar situation for Pentecostal Christians.

Finally, in 2003 the UAAR – Union of Atheist, Agnostics and Rationalist, the Italian member of the European Humanist Federation – formally asked for an Agreement, but the Government denied it a religion-like status. After several trials, the final word on the matter was pronounced by the Constitutional Court, which stated that the Government cannot decide which communities may be considered a religion or not, but that the legislative initiative of Agreements lies with the Government, not with the request by a religious group.[7]

Overcoming Bilateral Agreements: Towards a Bill for Religious Freedom

The matters that arose from the public debate on how to fully implement religious freedom for Muslims in Italy, drew attention to the downsides of the "Agreement's system". Since 1984 there was a general belief that Agreements were "the" solution to govern the relationship between the Italian Republic and religious minorities. This has proved wrong.

In mid 1980s religious minorities were historically settled and statistically irrelevant. In 1990s the situation changed, for the end of Cold War, globalisation and migration. Important religious traditions,

[7] Constitutional Court, Judgement 52/2016.

expressing different cultures – especially regarding the relationship with a secular environment – began to set roots in Italy. For example, many Muslims prefer to enrol their children in Catholic private schools, considering any confessional education better than a secular one. In other words, while Jews and Protestants were solidly part of a secularised Italian society and culture, "new" Italians who belonged to "new" faiths needed to find a place in it and somehow challenge it.

Another critical point of the Agreement's system is that, while it may be useful to regulate practical issues, such as chaplaincy in hospitals and prisons, the principle that the Government looks for a similarly structured counterpart may be a violation of Religious Freedom in itself. As said, the Concordat is formally a treaty between two governments and this is not a problem for the Roman Catholic Church as it shares a hierarchical structure with a modern state. Nevertheless, should the Italian Government demand all faiths that wishes to be exempted by what remains of the Fascist laws on Allowed Forms of Worship to change their structure? Moreover, how to overcome the right not to merge with analogous but distinct faith communities? And how to overcome the political will – shared by different Governments – not to sign Agreements just with any religious group claiming one?

Coming back to the reason behind the rejection of the Agreement with Jehovah's Witnesses, can a State punish the negative understanding of earthly powers from a faith community, by denying the implementation of their religious rights?

There is only one solution to these dilemmas: a Bill on Religious Freedom, that generally and systematically implements the principles of article 3 and article 8 of the Constitution. The first proposal came in 1990, the latest on 2016, but it is not a priority for the present Government. The main opposition to a Bill on Religious Freedom comes from populist and extreme right parties, as they feed on Islamophobia. Without an Agreement and a general Bill on Religious Freedom, Muslims may be

legally discriminated and their freedom of worship may be boycotted. Their rights to open a mosque or to collect money is not guaranteed by the Law. The same consequences are faced by Pentecostal Christians who are not part of the Assemblies of God, or by Jews who are not part of the Italian Jewish Union. This is a clear case where wilful discrimination against one group leads to a wider discrimination.

Moreover, in a context where religious weddings may have legal value, the absence of an Agreement and of a Bill on Religious Freedom forces Muslims who wish to marry in a religious way to do it in the mosque of a foreign Embassy, putting the couple outside the protection of the Italian Law, thus potentially harming the rights of a non-Muslim Italian citizen who marries a Muslim foreign national.

The lack of a Bill on Religious Freedom does not purify Italian Law from the original sin of the Laws on Allowed Forms of Worship. By keeping these laws still enforced, the ideological principles of Fascism live in Italian Democracy. In fact, Fascist law did not recognise individual nor community rights; on the opposite, the totalitarian State had rights on individuals. On the contrary, the Republican Constitution states that recipients of rights are its citizens as individuals and as associations (such as faith communities, political parties etcetera). It is crucial to overcome this shameful incoherence, in order to build a society that respects human rights and religious freedom.

9

CYPRUS

Achilles C. Emilianides

Legal Basis

The most basic legal source for religions in general is the Constitution of Cyprus. In view of the fact that the Constitution of Cyprus provides for the autonomy of the various religious groups of the Republic in organising and administering their internal affairs, state laws relating to religion are few and may be found scattered in various legal instruments. No single religion or creed is established as the official religion in Cyprus. As a result, there is no prevailing, established, or state religion in Cyprus. All the religions and creeds in Cyprus deal restrictively with their own affairs, without in any way interfering in the affairs of the State. The Constitution has thus introduced a system of coordination between Cyprus and the major religions and Christian creeds.[1] All religions enjoy religious

[1] See in detail Achilles C. Emilianides, *Law and Religion in Cyprus*, 2nd ed. The Hauge: Kluwer, 2014; Achilles C. Emilianides, "State and Church in Cyprus". In *State and Church in the European Union*, 2nd ed., edited by Gerhard Robbers. Baden-Baden: Nomos Verlagsgesellschaft, 2005, 236; Achilles C. Emilianides, "The Constitutional Framework of the Relations between Church and State in the Republic of Cyprus". *Nomokanonika* 1 (2006) 37; Charalambos Papastathis, "The Legal Status of Religions in the Republic of Cyprus". In *The Status of Religious*

freedom according to Article 18 of the Constitution, and are equal before the law, so that no legislative, executive or administrative act could discriminate against them. However, the five major churches and religious communities of the island, i.e., the Orthodox Christian, Islamic, Roman Catholic, Armenian Apostolic, and Maronite, further enjoy constitutional protection in accordance with Article 110 of the Constitution, which explicitly provides for the autonomy of their internal organisation.

The model prevailing in Cyprus is essentially a pluralistic model, which recognises and embraces the public dimension to religion, while at the same time attempting cooperation with all religions. The significance of faith in people's lives is considered as worthy of protection by the state and where the function of the state overlaps with religious concerns, the state seeks to accommodate religious views, insofar as they are not inconsistent with the state's interests. In consequence, pluralism is achieved through the recognition that the state and the various religions occupy, in principle, different societal structures; religious neutrality is not, however, achieved simply because there is religious autonomy, but also through positive measures on behalf of the state, which aim at the protection of religions.[2]

Confessions of the States Applying for Membership in the European Union, edited by Francis Messner. Strasbourg: Giuffrè, 2000, 208; Charalambos Papastathis, *On the Administrative Organisation of the Church of Cyprus,* 1981 (in Greek), 34; Andreas Gavrielides, *Nomocanonical and Political Study on the Defrocking of Bishops in Cyprus in Conjunction to the Exercise of Their Ethnarchical Rights*, 2nd ed, 1973 (in Greek).

[2] Achilles C. Emilianides, "Secularism, Law and Religion within the Cypriot Legal Order". In *Religion, Rights and Secular Society: European Perspectives,* edited by Peter Cumper and Tom Lewis. Cheltenham: Edward Elgar, 2012, 169.

Institutional Framework

Article 18 of the Constitution of Cyprus safeguards the right to religious freedom, including the freedom of religious conscience and freedom of worship.[3] The aforementioned article corresponds in many ways to Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), but it is more detailed, while its provisions cover sectors which are not recorded in Article 9. Article 18(1) provides that every person has the right to freedom of thought, conscience and religion. Such right is far-reaching and profound. Freedom of thought, conscience and religion is safeguarded for any person, either a believer or an atheist, a citizen or a non-citizen of Cyprus. Conscience and religion are thus not confined to the belief of the relation between a human being and a Creator. Religion or conviction refers to theistic, non-theistic and atheistic convictions. It includes convictions such as agnosticism, free thinking, pacifism, atheism and rationalism. It is, therefore, not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to traditional religions.[4] Until a person attains the age of 16, the decision as to the religion to be professed by him/her shall be taken by the person having the lawful guardianship of such person on the basis of Article 18(7) of the Constitution.

Article 18(4) guarantees the more particular manifestations of an individual's religious freedom, stipulating that every person is free and has the right to profess his faith and to manifest his religion or belief, in worship, teaching, practice or observance, either individually or collectively, in private or in public, and to change his religion or belief.

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[3] Achilles C. Emilianides, "Religious Freedom in Cyprus". In *Religious Freedom in the European Union*, edited by Achilles C. Emilianides. Leuven: Peeters, 2011, 89; Criton Tornaritis, *The State Law of the Republic of Cyprus.* Nicosia: Cyprus Research Centre, 1982 (in Greek), 145.

[4] *Pitsillides v. The Republic* [1983] 2 CLR 374.

Freedom to manifest one's religion entails the right to exercise religious activities in public, as well as trying to convince others, through teaching, to change their religion or belief. A person may further establish and maintain communication with individuals and communities in matters of religion or belief at a national or international level. Any person may write, issue and disseminate texts or publications in order to manifest their religious beliefs and may teach such religious beliefs to others, and train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of their religion. The constitutional right to religious freedom further includes the right not to disclose one's religion.[5] As a general rule, religion is not referred to in official Cypriot documents such as passports, or identity cards. Furthermore, any person has the right to replace their current religion with another or to adopt atheistic views.[6]

Interference with the right to religious freedom is in principle prohibited, irrespective of whether such interference is direct, or indirect. No limitations whatsoever are permitted with respect to the freedom of thought, or conscience or on the freedom to have or adopt a religion or belief of one's choice; such freedoms are protected unconditionally and are considered to be absolute. However, the freedom to manifest one's religion can be restricted, by virtue of Article 18(6), so long as such limitations are prescribed by law and are necessary in the interests of: (a) the security of the Republic; (b) constitutional order; (c) public safety; (d) public order; (e) public health; (f) public morals; (g) the protection of the

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[5] *Elia v. The Republic* [1985] 3 CLR 38, *Panayiotou v. The Republic* [1991] 3 CLR 1837 (in Greek), Second Report Submitted by Cyprus pursuant to Art. 25, para. 1 of the Framework Convention for the Protection of National Minorities, 27 Oct. 2006, para. 39.

[6] *Tsivitanides v. Tsivitanides* [1956] 21 CLR 111, *Houssain v. Houssain* [1979] 1 CLR 600, Achilles C. Emilianides, *The Cypriot Law of Marriage and Divorce*. Athens-Thessaloniki: Sakkoulas, 2006 (in Greek), 168.

rights and liberties guaranteed to every person by the Constitution. A limitation that has been prescribed by law in order to facilitate interests of others than those explicitly referred to in Article 18(6) of the Constitution, shall not be considered to be legitimate. In addition to the conditions mentioned above, any limitations on the freedom to manifest one's religion must be considered to be necessary in a democratic society, under the mandate of Article 9(2) of the ECHR; and this has been readily accepted by the Cypriot courts. Establishing that the measure is necessary in a democratic society involves showing that the action taken is in response to a pressing social need and that the interference with the rights protected is no greater than is necessary to address such pressing social need; consequently, a test of proportionality should therefore be applied. Any restrictions should further, not discriminate among religions.

Current Challenges

Clashes between positive law and religious practices are not unusual. If the law is based upon a particular system of values such as Christian morality or secularism, there could be circumstances under which the law requires what the religion prohibits, or conversely where the law prohibits what the religion requires. The question of how to resolve such clashes has not been answered in a uniform manner by the various European states, or non-European states.[7] It could be argued that the general principle so far accepted in Cyprus with respect to clashes between law and religion, is that religious freedom does not necessarily imply that religious practices that are contrary to what is prescribed by law shall be upheld; furthermore, despite that all religions are considered equal before the law, Cyprus socially constitutes a European, and a predominantly Christian-oriented, civilisation. While there have been few cases

[7] Achilles C. Emilianides, "Individual Rights and Internal Law of the Church". *Nomokanonika* 2 (2015) 21 (in Greek).

concerning new religious movements, probably due to the fact that the number of adherents to such religious movements in Cyprus is extremely low, it is still far-fetched to expect that a court might recognise that there should be for example, exemption for drug use due to their religious beliefs. State interests are normally expected to prevail over religious interests, unless there is a justification on why religious interests ought to exclude the application of state legal provisions.

Contrary to Greece, where the majority of the population also adheres to the Greek Orthodox Christian religion, illicit proselytism has not been an issue of much concern in the Cypriot legal order. Whereas Article 18(5) of the Constitution prohibits the use of physical or moral compulsion for the purpose of making a person change or preventing the person from changing religion, such constitutional prohibition has never been supplemented by law. Consequently, there can be no prosecutions which concern illicit proselytism, since according to Article 12(1) of the Constitution, which corresponds to Article 7 of the ECHR, there can be no crime, no offence and no punishment without law. Therefore, illicit proselytism does not constitute an autonomous criminal offence; Article 18(5) should be interpreted as setting out a constitutional principle which supplements the principle of religious freedom and not aiming at the oppression of religious minorities.[8]

Cyprus has struggled, however, with the recognition of conscientious objection, especially in view of the compulsory nature of military service as a result of the continuing Turkish military occupation of approximately

[8] Achilles C. Emilianides, "Religion in the Criminal Law in Cyprus". In *Religion and Criminal Law*, edited by Matti Kotiranta and Norman Doe. Leuven: Peeters, 2013, 35; Criton Tornaritis, "Is Chiliasm a Religion? Is It allowed by the Constitution and What Measures Are Provided against It?" *Cyprus Law Tribune* 1-2 (1981) 3–5 (in Greek).

37% of the area of Cyprus.[9] Following recommendations by the European Committee of Social Rights, the Cypriot legislation has been amended so as to explicitly provide for the right of conscientious objection.[10] Moreover, similarly to other European countries, questions relating to the inter-relationship between religious freedom and religious education[11] and the application of the principle of non-discrimination with regards to the financing of religions,[12] have been in the forefront of public debate.

[9] *Pitsillides v. The Republic* [1983] 2 CLR 374, *Christou v. The Republic* [1982] 2 CLR 365, Theodora Christodoulidou, "Religious Conscientious Objection in Cyprus". *Cyprus and European Law Review* 2 (2006) 324.

[10] European Committee of Social Rights, European Social Charter (Revised), Conclusions 2004 (Cyprus), Report by Alvaro Gil-Robles on his visit to Cyprus, 25–29 Jun. 2003, CommDH (2004) 2, 12 Feb. 2004, para. 4.

[11] Achilles C. Emilianides, "Religion in Public Education in Cyprus". In *Religion in Public Education,* edited by Gerhard Robbers. Trier: European Consortium for State and Church Research, 2011, 87.

[12] Achilles C. Emilianides, "Il Finanziamento delle cinque Religioni: Il Caso Cipriota". *Quaderni di Diritto e Politica Ecclesiastica* 1 (2006) 107; Achilles C. Emilianides, "The Funding of Churches in Cyprus". In *The Funding of Churches in the European Union*, edited by Salvatore Berlingo. Leuven: Peeters, 2009.

10

TURKEY

Yiannis Ktistakis

Turkey's Constitution, adopted in 1982, provides for freedom of belief, worship, and the private dissemination of religious ideas, and prohibits discrimination on religious grounds (Article 24). It is based on the French model of *laïcité*, strict secularism, which requires the absence of religion in public life and in government. Moreover, Article 10 of the Constitution guarantees that everyone is equal before the law without distinction of philosophical belief, religion and sect, or any such considerations, and that all citizens shall be treated equally by state organs and administrative authorities in all their proceedings.

Under Article 90 of the Constitution, which regulates the status of international treaties in domestic law, the international agreements which Turkey is a party to are superior to national law; when there are contradictions between the international agreements and national laws concerning human rights the provisions of international conventions prevail. Accordingly, Turkey is a party to two important human rights conventions which guarantee the right to freedom of thought, religion or belief, the UN International Covenant on Civil and Political Rights (ICCPR – Articles 18 and 27)[1] and the European Convention for the

[1] ICCPR entered into force on 23 Sept., 2003 in Turkey.

Protection of Human Rights and Fundamental Freedoms (ECHR – Article 9)[2]. Nevertheless, it must be emphasised that Turkey has made reservations to some provisions of both treaties impacting the right to freedom of religion or belief.[3] Finally, in Turkey, there is not a specific law regarding the right to freedom of religion or belief. However, various laws and regulations include provisions affecting the right to freedom of religion or belief. These laws are: Turkish Civil Code,[4] Law of Associations,[5] Law of Foundations,[6] Law on Assembly and Demonstrations,[7] Public Works Law,[8] Turkish Criminal Code,[9] Basic Law on National Education,[10] Law on Private Educational Institutions,[11]

[2] ECHR entered into force on 18 May, 1954 in Turkey.

[3] Turkey made reservations on Article 2 of the First Protocol of the ECHR declaring that the provisions of the Law on Unity of Education shall prevail and on Article 27 of the ICCPR, which protects individuals belonging to minorities, declaring that the provisions of the Treaty of Lausanne shall prevail. See the criticism about the validity of these reservations, Mine Yıldırım, *The Right to Freedom of Religion or Belief in Turkey – Monitoring Report January–June 2013.* Norwegian Helsinki Committee, 2013.

[4] Türk Ceza Kanunu [Turkish Civil Code] No. 4721, 22 Nov. 2001.

[5] Dernekler Kanunu [Law on Associations] No. 5253, 4 Nov. 2004.

[6] Vakıflar Kanunu [Law of Foundations] No. 5737, 20 Feb. 2008.

[7] Toplantı ve Gösteri Yürüyüşleri Kanunu [Law on Assembly and Demonstrations] No. 2911, 6 Oct. 1983.

[8] İmar Kanunu [Public Works Law] No. 3194, 3 May 1985.

[9] Türk Ceza Kanunu [Turkish Criminal Code] No. 5237, 26 Sept. 2004.

[10] Milli Eğitim Temel Kanunu [Basic Law on National Education] No. 1739, 14 June 1973.

[11] Özel Eğitim Kurumları Kanunu [Law on Private Educational Institutions] No. 5580, 8 Feb. 2007.

Law on the Closure of Religious Dervish Lodges and Shrines,[12] Law on the Prohibition of Wearing Certain Garments.[13]

However, under the Turkish interpretation of secularism, the state has pervasive control over religion and denies full legal status to all religious communities. This limits religious freedom for all religious groups and has been particularly detrimental to the smallest minority faiths.

Nominally, 99.0% of the Turkish population is Muslim of whom a majority belong to the Sunni Branch of Islam. A sizeable minority of this population (10%-30%) is affiliated with the Alevi sect. The fewer than 150,000 Christians in Turkey include Armenian and Greek Orthodox, Syriac Christians, Jehovah's Witnesses, and Protestants, as well as small Georgian Orthodox, Bulgarian Orthodox, Maronite, Chaldean, Nestorian Assyrian, and Roman Catholic communities. The Jewish community comprises fewer than 20,000 persons. Other smaller communities exist in Turkey, including Baha'is.

Official control of Islam is through the Presidency of Religious Affairs, and of all other faiths is through the General Directorate for Foundations. Additionally, the 1923 Treaty of Lausanne, a peace treaty between Turkish military forces and several European powers, affords specific guarantees and protections for the Greek and Armenian Orthodox and Jewish communities, but they are not provided to other minority groups.

Furthermore, until recently, the only form of legal entity open to religious communities was for its members to establish foundations, for owning the property of the community (mosques, churches, schools, other building, land etcetera), or for supporting activities related to the religious community. The foundation system is old, and dates back to the Ottoman era tradition of *vakfis*, which is still the Turkish name for it. Almost all the

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[12] Tekke ve Zaviyelerle Türbelerin Seddine ve Türbedarlıklar ile Bir Takım Unvanların Men ve İlgasına Dair.

[13] Bazı Kisvelerin Giyilemeyeceğine Dair Kanun [The Law on the Prohibition of Wearing Certain Garments] No. 2879, 3 Dec. 1934.

foundations of the Greek Orthodox, Armenian, and Jewish communities, as well as those of several others, date back to before the 1923 establishment of the Turkish Republic, or at least back to an important 1936 registration of foundations. This applies to all foundations in Turkey, of which there are a great variety, with foundations having a direct or indirect relationship to religious activity being only a minority. All foundations are under the supervision of the Directorate-General for Foundations.[14] For religious communities, the foundation system seems primarily to provide them with an indirect arrangement for property ownership and the financing of related activities (schools, hospitals, and etcetera).

There are specific concerns about the respect of religious freedom in Turkey. The first is about the government interference in internal life of religious group. The Turkish government continues to require that only Turkish citizens can be members of the Greek Orthodox Church's Holy Synod, which elects that community's Patriarch. In addition, the government of Turkey denies religious minority communities the ability to train clergy in the country. The Greek Orthodox Theological School of Halki remains closed, as it has been since 1971. The Armenian Orthodox community also lacks a seminary, although there are 16 Armenian Orthodox parish schools.

The next concern (second) is about religious minority properties. Historically, the Turkish government expropriated religious minority properties. Beginning in 2003, and especially since a 2011 governmental decree, many properties have been returned or financial compensation paid when return was not possible. According to the Turkish government, more than 1,000 properties – valued at more than 2.5 billion Turkish Lira – had been returned or compensated for between 2003 and 2014. For example, in

[14] Foundations are regulated in the Turkish Civil Code [Türk Ceza Kanunu] [Turkish Civil Code] No. 4721, 22 Nov. 2001, First Book, Third Section, Articles 101 to 117, supra 3, and in a special Law on Foundations [Vakıflar Kanunu], supra 5.

2013, the government returned the deed for 244,000 square meters (over 24 hectares) of land to the Syriac Foundation that maintains the historic Mor Gabriel Monastery. However, several cases connected to Mor Gabriel have been brought before the European Court of Human Rights, including a case regarding an additional 320,000 square meters (nearly 32 hectares) claimed by the Syriac community.[15] In 2015, the Turkish government reports that out of 1,560 applications, it returned an additional 333 properties and paid compensation for 21 properties. For example, in October 2015, the government returned 439 acres of land to the Syriac Christian Mor Hananyo Monastery in Mardin. The same month, following 175 days of protests by Armenians and various religious and ethnic communities, the government returned the deed of Camp Armen to the Armenian Protestant Church Foundation. Camp Armen, confiscated by the government in 1983, was once part of a boarding school and orphanage for Armenian children. The remaining applications are still under review. Religious minority communities report that the government has rejected around 1,000 applications since 2011.

Third issue of concern is the education. The Constitution makes religious and moral instruction compulsory in public primary and secondary schools, with a curriculum established by the Ministry of National Education. Non-Muslim children can be exempted, but to do so parents and students must reveal their religious affiliation, which can lead to societal and teacher discrimination. Alevis, however, are not afforded the exemption option. In 2014, the European Court of Human Rights (ECtHR) ruled that Turkey's compulsory religious education violated the right of Alevi parents and others to have their children educated consistent with their own convictions. The court ruled that Turkey should institute a system whereby pupils could be exempted from religion classes without parents

[15] *Fondation du monastère syriaque de Saint-Gabriel à Midyat v. Turkey* (Application no. 61412/11).

having to disclose their religious or philosophical convictions.[16] To date, the Turkish government has not done so. Religious minority communities also have complained that the textbooks used in the compulsory class were written from a Muslim worldview and included generalised and derogatory language about other faiths.[17]

A last issue of concern are the national identity cards. In January 2015, responding to a 2010 ECtHR ruling that the mandatory listing of religious affiliation on national identity cards violated the ECHR[18], the parliament passed a law removing the requirement on the cards. However, the new ID cards, expected to be distributed in 2016, will include a microchip where religious affiliation may be included, although it will not be required. This has led to the concern that individuals who fail to list "Muslim" will automatically be deemed part of a minority community, which may lead to bias. Additionally, it is not known what affiliations will be permitted to be listed on the microchips. In the past, some groups, such as Baha'is and atheists, were unable to state their affiliations on their identity cards because their faiths or belief systems were not on the official list of options.

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[16] *Mansur Yalçın and Others v. Turkey* (Application no. 21163/11, 16 Sept. 2014). See also, *Hasan and Eylem Zengin v. Turkey* (Application no. 21163/11, 9 Oct. 2007).

[17] In late 2015, United States Commission on International Religious Freedom released an analysis of the books. Ziya Meral, *Compulsory Religious Education in Turkey: A Survey and Assessment of Textbooks*. US Commission on International Religious Freedom, 2015. https://www.uscirf.gov/sites/default/files/TurkeyTextbookReport.pdf [accessed 23 Apr. 2019]. The report found that the textbooks included positive passages on religion and science, religion and rationality, good citizenship, religious freedom, and the origins of differences in Islamic thought. However, the study also found that the textbooks had superficial, limited, and misleading information about religions other than Islam, including Judaism, Christianity, Hinduism, and Buddhism, and linked atheism with the concept of Satanism.

[18] *Sinan Işık v. Turkey* (Application no. 21924/05, 2 Feb. 2010).

In conclusion, it is of great importance for Turkey to formulate a policy to efficiently protect all aspects of the right to freedom of belief, as guaranteed under international human rights standards, in a way that ensures neutrality and pluralism. A law on legal personality of religious communities, prepared with this approach and with the collaboration of all the stakeholders, would be an important start in protecting and advancing the rights of all individuals and groups in Turkey, regardless of their beliefs.

PART III

FREEDOM OF RELIGION OR BELIEF OUTSIDE OF EUROPE – SOME EXAMPLES

11

IRAQ

Willy Fautré

Under its 2005 Constitution, Iraq is defined as a democratic, federal parliamentary Islamic republic.[1] Iraq has seen its share of conflict and violence due to war and sectarian strife. Since 2003, approximately 170,000–200,000 civilians have been killed.[2] As of 2016, Iraq's population is an estimated 37.2 million.[3]

Iraq has over twenty nationally recognised religions as well as many other religious groups who have not yet received official recognition. When it comes to the legal protection of freedom of religion or belief, Iraq is party to a wide range of international treaties,[4] including the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. However, its national legislation lacks coherence to its international

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[1] *Iraqi Constitution* https://web.archive.org/web/20161128152712/http:/www.iraqinationality.gov.iq/attach/iraqi_constitution.pdf [accessed 15 May 2018].

[2] *Iraq Body Count* https://www.iraqbodycount.org/database/ [accessed 15 May 2018].

[3] "Iraq". *The World Bank* https://data.worldbank.org/country/iraq [accessed 15 May 2018].

[4] "Ratification of International Human Rights Treaties – Iraq". *Human Rights Library* http://hrlibrary.umn.edu/research/ratification-iraq.html [accessed 15 May 2018].

commitments, in some instances seemingly promoting discrimination against various religious groups, ultimately presenting a series of violations of freedom of religion and belief.

Religious Demography

As of 2017, the CIA World Factbook estimates that approximately 99% of the Iraqi population is Muslim, with an estimated 55–60% Shia and 40% Sunni, and non-Muslims making up the remaining 1%.[5] Christian leaders estimate that there are now fewer than 300,000 Christians in Iraq compared to approximately one million in 2003. The Christian population in Iraq is comprised of approximately 67% Chaldean Catholics (an eastern rite of the Catholic Church); nearly 20% are members of the Assyrian Church of the East. The remainders are Syriac Orthodox, Syriac Catholic, Armenian Catholic, Armenian Orthodox, Anglican, and other Protestants.[6]

The Yazidis have also seen a decrease in their population. This endogamous monotheistic religion is one of the most ancient religions in the Middle East. It has been a target for ISIS, which has killed many of them and enslaved their women and children. As of 2015, their leaders reported a population of approximately 350,000 – 400,000, down from 700,000 in 2003.[7]

The following religious groups are legally recognised and registered with the government: Islam, Chaldean, Assyrian, Assyrian Catholic, Syriac Orthodox, Syriac Catholics, Armenian Orthodox, Armenian Catholic, Roman Orthodox, Roman Catholic, Latin, National Protestant

[5] "Middle East: Iraq". *CIA* https://www.cia.gov/library/publications/the-world-factbook/geos/iz.html [accessed 15 May 2018].

[6] https://www.state.gov/documents/organization/256479.pdf [accessed 15 May 2018].

[7] "Iraq". http://www.uscirf.gov/sites/default/files/USCIRF_AR_2016_Tier1_2_Iraq.pdf [accessed 15 May 2018].

and Anglican, Evangelical Protestant Assyrian, Adventist, Coptic Orthodox, Yazidi, Mandean Sabeans, and Jewish. All recognised religious groups have their own personal status courts which are responsible for handling marriage, divorce and inheritance issues.

Constitutional Framework

Iraq's current Constitution was adopted in October 2005, two and a half years after U.S. and coalition forces invaded Iraq and toppled the brutal regime of dictator Saddam Hussein. This Constitution declares Islam the official state religion and guarantees freedom of religious belief and practice for Muslims as well as state-sanctioned religious groups under Article 2:

> First: Islam is the official religion of the State and is a foundation source of legislation:
>
> A. No law may be enacted that contradicts the established provisions of Islam.
>
> B. No law may be enacted that contradicts the principles of democracy.
>
> C. No law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution.
>
> Second: This Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights to freedom of religious belief and practice of all individuals such as Christians, Yazidis, and Mandean Sabeans.[8]

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[8] *Iraqi Constitution.* https://web.archive.org/web/20161128152712/; http:/www.iraqinationality.gov.iq/attach/iraqi_constitution.pdf [accessed 15 May 2018].

This article is a source of concern for two reasons: (1) it empowers the government to guarantee "the Islamic identity of the majority of the Iraqi people", and (2) terms such as "established provisions of Islam" and "Islamic identity" are left undefined, which enables *shari'a* judges of the Supreme Court to negate human rights by interpreting these phrases as they see fit.

Some Legislative Concerns

In addition to the Constitution, a number of laws are also concerning. Article 26 of the National Identity Card Law No. 3 / 2016 stipulates that a non-Muslim may change his or her religion, while a Muslim may not. On 27 October 2015, a law was passed in the Iraqi parliament that forces children of parents converting to Islam to automatically become Muslim. In protest, non-Muslim MPs walked out of the Iraqi Parliament session.[9] The state cannot prosecute individuals on the ground that they have abandoned Islam as there is no law on apostasy. However, the absence of such a law does not necessarily mean that a Muslim may freely convert to another religion. While the state may not actively pursue the convert in criminal courts, it does not mean that they will be willing to change the national identity documents stating the converts change in religion.[10] Law No 105 of 1970 prohibits the practice of the Baha'i faith, punishing anyone practicing the faith with 10 years' imprisonment. Resolution 201 of 2001 prohibits the practice of the Wahhabi branch of Islam. Although

[9] Of the 328 seats in the Council of Representatives, the law reserves eight seats for members of minority communities: five for Christian candidates from Baghdad, Ninewa, Kirkuk, Erbil, and Dohuk; one for a Yezidi; one for a Sabaean-Mandaean; and one for a Shabak. The Iraqi Kurdistan Parliament reserves 11 of its 111 seats for minorities: five for Christians, five for Turkmen, and one for Armenians.

[10] http://d-scholarship.pitt.edu/25351/1/Hamoudi_Religious_Minorities_Final.pdf 403 [accessed 15 May 2018].

provisions on freedom of religion in the Constitution may supersede these laws, no court challenges have been brought to have them overturned, and no legislation has been proposed to repeal them.[11] The law does not provide a mechanism for a new religious group to obtain legal recognition. For unrecognised religions, the law does not specify penalties for practicing their faith.

Current Challenges

According to *World Watch Monitor*[12], Christians are being excluded from the international reconstruction plans for northern Iraq, further eroding the likelihood of their return once Islamic State has been militarily defeated there, an alliance of 16 United Kingdom-based charities has warned in a report entitled *Ensuring Equality*.

In November 2016, *Aid to the Church in Need* (ACN) agreed with the leaders of the three major Christian rites of the Nineveh Plains (Chaldean Catholic, Syriac Catholic and Syriac Orthodox) to hire teams of engineers to go to each village, house by house, and document the extent of damages, with the view of estimating the costs of repair. More than 12,000 private homes in twelve Christian villages on the Nineveh plains were damaged by the Islamic State "and the costs for rebuilding would vastly exceed 200 million dollars" according to the ACN study. Reconstruction started on 6 February 2017 in Tel Skof, 170 families have already moved back. In a historical first, the three rites have formed a joint Reconstruction Committee to be able to apply to the EU and other funding sources.

Last but not least, on the occasion of their meeting in Havana (Cuba) on 12 February 2016, Pope Francis and Patriarch Kirill of Moscow and

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[11] "Iraq". *United States Department of State*. http://photos.state.gov/libraries/iraq/231771/PDFs/religious%20freedom.pdf [accessed 15 May 2018].

[12] World Watch Monitor. http://bit.ly/2k1HyXx [accessed 15 May 2018].

All Russia released a Joint Declaration in which a substantial part was devoted to the situation of Christians in the Middle East, religious freedom and interreligious dialogue.[13] The 2000-year old Christian community is facing extinction if the international community does not guarantee their security and invest in the reconstruction of its civil and religious infrastructures.

In August 2014, around 400,000 Yazidi were living in the Mount Sinjar region of North-western Iraq when they were targeted by ISIS, who considers them (and all those outside their own group ideology) to be infidels. ISIS attacked, killed, and kidnapped those living in Sinjar City and the surrounding area. Many Yazidi fled to the nearby Mount Sinjar where they were trapped for days without food, water, and other resources until they received international aid.[14] Their population was still devastated; various organisations report that between 2,500 to 5,000 Yazidi were killed and over 6,000 kidnapped.[15] A survey conducted by Foreign Affairs between November and December 2015 interviewed 1,300 Yazidi households in Iraqi Kurdistan, where many of the displaced Yazidi from the Sinjar region are currently displaced.[16] Their results found that 2.5% of the Sinjar Yazidi population (9,900 Yazidi) were either killed or kidnapped during the August 2014 attack. Approximately 3,100 were killed in total, half by ISIS (typically by gunshot, beheading or being burned alive) and the other half from the severe conditions they endured on Mount Sinjar during the siege. The remaining 6,800 Yazidi were kidnapped and taken to Raqqa in Syria. Yazidi girls and women were

[13] See the full text of the Declaration at http://en.radiovaticana.va/news/2016/02/12/joint_declaration_of_pope_francis_and_patriarch_kirill/1208117.

[14] Valeria Cetorelli et al. “ISIS’ Yazidi Genocide: Demographic Evidence of the Killings and Kidnapping”. https://www.foreignaffairs.com/articles/syria/2017-06-08/isis-yazidi-genocide [accessed 15 May 2018].

[15] Ibid.

[16] Ibid.

forced into sexual servitude, forced marriage, pregnancy, and other conditions, such as systematic rape. Young boys were forced to join ISIS ranks as child soldiers, suicide bombers, and subjected to beating and torture as well. All were forced to religious conversion.

The bodies of the dead from the 2014 mass execution are still in shallow graves around Sinjar, which goes against Yazidi tradition.[17] In March 2016, the US state department declared the murders committed by ISIS as genocide against the Yazidis, Christians, and Shi'a Muslims in both Syria and Iraq.[18]

As of 22 September 2017, the UN Security Council passed Resolution 2379 (2017), which authorises an independent investigation of the crimes by ISIS against the Yazidi.[19] The resolution respects Iraq's sovereignty and authorises a team for the collection of evidence, legal means and capacity-building pathways as well as financing to support the investigation. With Resolution 2379, the international community hopes that ISIS will be held responsible for their crimes and the Yazidi will be able to see justice one day.

Some Holy Sites Destroyed by ISIS

- *HATRA* – A UNESCO World Heritage site from the 3rd century B.C., it was a prominent trading center on the Silk Road.

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[17] Cathy Otten, "Life After ISIS Slavery for Yazidi Women and Children". https://www.newyorker.com/news/news-desk/life-after-isis-slavery-for-yazidi-women-and-children [accessed 15 May 2018].

[18] "Targeting of and Attacks on Members of Religious Groups in the Middle East and Burma". *U.S. State Department.* https://www.state.gov/j/drl/rls/254807.htm [accessed 15 May 2018].

[19] "Security Council Requests Creation of Independent Team to Help in Holding ISIL (Da'esh) Accountable for Its Actions in Iraq". *UN* https://www.un.org/press/en/2017/sc12998.doc.htm [accessed 15 May 2018].

- *NINEVEH* – An Assyrian capital around 700 B.C., it was the largest city in the world at one point.
- *MOSUL MUSEUM AND LIBRARIES* – Ancient manuscripts and books have been destroyed with the demolition of Mosul's libraries.
- *NIMRUD* – The first Assyrian capital "founded 3,200 years ago" was bulldozed by ISIS.
- *KHORSABAD* – Another Assyrian capital outside Mosul with a palace constructed between 717 and 706 B.C. by Assyria's King Sargon II.
- MAR BEHNAM MONASTERY – A 4th century monastery dedicated to an early Christian saint, it has been maintained since the late 1800s by Syriac Catholic monks. "The extremists used explosives to destroy the saint's tomb and its elaborate carvings and decorations".
- The following churches in Mosul: *THE VIRGIN MARY CHURCH*, *DAIR MAR ELIA*, *THE AL-TAHERA CHURCH*, *ST. MARKOURKAS CHURCH* and *THE SA'A QADIMA CHURCH.*
- *7th-CENTURY GREEN CHURCH (ST. AHOADAHMAH CHURCH)* – in Tikrit
- *TOMB OF THE PROPHET DANIEL* – in Mosul
- *MOSQUE OF THE PROPHET YUNUS* – "Mosul's Mosque of the Prophet Yunus was dedicated to the biblical figure Jonah, considered a prophet by many Muslims". "Like many of Iraq's sites, the mosque was a layer cake of history, built on top of a Christian church that in turn had been built on one of the two mounds that made up the Assyrian city of Nineveh".

- *IMAM DUR MAUSOLEUM* – "The Imam Dur Mausoleum, not far from the city of Samarra, was a magnificent specimen of medieval Islamic architecture and decoration. It was blown up last October".
- *AL-QUBBA HUSSEINIYA MOSQUE* – Mosul
- *JAWAD HUSSEINIYA MOSQUE* – Tal Afar
- *SAAD BIN AQEEL HUSSEINIYA SHRINE* – Tal Afar
- *AHMED AL-RIFAI SHRINE AND TOMB* – Mosul
- *THE "TOMB OF THE GIRL"* – Mosul
- *SHRINE OF FATHI AL-KA'EN* – Mosul
- *THE AL-ARBA'EEN MOSQUE* – Located in Tikrit, it contained forty Umar era tombs.
- *KHUDR MOSQUE* – Mosul
- *TOMB AND MOSQUE OF THE PROPHET JONAH* – Mosul *SHRINE OF IMAM AWN AL-DIN* – A 13th century shrine in Mosul.
- *HAMOU AL-QADU MOSQUE* – In Mosul from the 1800s.
- *GREAT MOSQUE OF AL-NURI* – In Mosul, known for its leaning minaret.[20]

[20] Andrew Curry, "Here Are the Ancient Sites ISIS Has Damaged and Destroyed", http://news.nationalgeographic.com/2015/09/150901-isis-destruction-looting-ancient-sites-iraq-archeology/, [accessed 15 May 2018].

12

SYRIA

Willy Fautré

Although the 2012 Constitution of Syria (officially the Syrian Arab Republic) proclaims itself a democratic state (Article 1) that is governed by a republican system (Article 2),[1] in practice Syria has been under authoritarian rule by the Assad family since 1970 when Hafez al-Assad came to power. Current President Bashar al-Assad succeeded his father after his death, in June 2000 and continued his oppressive line. Against the backdrop of the Arab Spring, there was a popular revolt which led to the catastrophic civil war Syria has endured since 2011. As of September 2017, Syria's population was reported to be approximately 18 million, with 5.2 million Syrian refugees living in Egypt, Iraq, Jordan, Lebanon, and Turkey due to the civil war.[2]

Furthermore, Syria is party to the International Convention on the Elimination of All Forms of Racial Discrimination and the International

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[1] "Constitution of the Syrian Arab Republic of 2012". *WIPO.* http://www.wipo.int/wipolex/en/text.jsp?file_id=429791 [accessed 25 May 2018].

[2] "Middle East: Syria" *CIA.* https://www.cia.gov/library/publications/the-world-factbook/geos/sy.html [accessed 25 May, 2018].

Covenant on Civil and Political Rights since 1969.[3] However, at present, due to the civil war there have been massive violations from both state and non-state actors upon all religious communities in the state.

Syria's population is religiously diverse. As of 2017, the CIA World Factbook estimates that 87% of the Syrian population is Muslim, with 74% Sunni, another 13% comprised of Alawi, Ismaili and Shi'a, 10% Christian, 3% Druze and a very small community of Jews.[4] There is no official state religion.

Constitutional Framework

Syria's 2012 Constitution was instituted after a referendum that came amid a revolt against President Bashar, whose legitimacy was called into question by various state and non-state actors.[5] It prescribes Islam as the official religion of the President and makes Islamic Jurisprudence the source for the majority of legislation. It also guarantees respect for freedom of religion and belief for all in Article 3:

> The religion of the President of the Republic is Islam; Islamic jurisprudence shall be a major source of legislation; The State shall respect all religions, and ensure the freedom to perform all the

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[3] "Ratification of 18 International Human Rights Treaties". *OHCHR.* http://indicators.ohchr.org [accessed 25 May 2018].

[4] "Middle East: Syria" *CIA.* https://www.cia.gov/library/publications/the-world-factbook/geos/sy.html [accessed 25 May 2018].

[5] "Syria claims 90% of voters backed reforms in referendum". *The Guardian.* https://www.theguardian.com/world/2012/feb/27/syria-bashar-al-assad [accessed 25 May 2018]; "Factbox: Referendum on Syria's new constitution". *Reuters.* https://www.reuters.com/article/us-syria-constitution/factbox-referendum-on-syrias-new-constitution-idUSTRE81O0BT20120225 [accessed 25 May 2018]; "Syrians Said to Approve Charter as Battles Go On". *The NY Times.* https://www.nytimes.com/2012/02/28/world/middleeast/syrian-violence-continues-as-west-dismisses-new-charter.html [accessed 25 May 2018].

> rituals that do not prejudice public order; The personal status of religious communities shall be protected and respected.

There are two problems that stand out in the above article. First, the Constitution only allows a Muslim as president, discriminating against persons of another faith to fill the presidency; Second, "Islamic jurisprudence" is specified as the main source of legislation, however what Islamic jurisprudence it is referring to is exactly is not defined, which leaves the door open for possible future abuse and confusion. Furthermore, these two stipulations combined seemingly put Islam as the de facto state religion even if is not expressly named as such.

Freedom of belief is also mentioned in Article 42 paragraph 1 and the freedom to express those beliefs in paragraph 2:

> 1. Freedom of belief shall be protected in accordance with the law;
>
> 2. Every citizen shall have the right to freely and openly express his views whether in writing or orally or by all other means of expression.

Since the revolt turned into a civil war, the provisions of the Constitution are presently moot.

The doctrine of the ruling Ba'ath Party is officially secular and stipulates a separation of religion from the state. However, there is an underlying recognition of Islam as a vital element in Arab nationalism, which has made Ba'athism (the founder of which was a Greek Orthodox Christian) more popular by expanding its appeal as a pan-Arab ideology.[6] In 2012, a new Constitution[7] was approved. It does not deem Islam the official religion but it requires that the president be Muslim and stipulates

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[6] Paul A. Marshall (ed.), *Religious Freedom in the World*. Lanham: Rowman & Littlefield, 2007, 384.

[7] "Constitution of the Syrian Arab Republic of 2012". *WIPO.* http://www.wipo.int/wipolex/en/text.jsp?file_id=429791 [accessed 25 May 2018].

Islamic jurisprudence as the principal source of legislation (Article 3). However, loopholes are tolerated as, for example, with the inheritance law that in theory relies on *shari'a*.

The government requires its entire people to nominally affiliate with one of three groups: Muslim, Christian or Jew, which is documented on their birth certificate and is required on legal documentation for marriage or religious pilgrimage. Although Syrian law does not prohibit proselytism, authorities discourage it. Conversions to Christianity are rare and generally rejected by society.

All religious groups must be registered and the government monitors their financing. Recognised religious institutions and clergy receive free utilities and are exempt from real estate taxes on religious buildings and personal property taxes on their official vehicles. The Assad regime has officially banned any sort of Salafi group in Syria[8] and Law 49 of 1980 makes membership of the Muslim Brotherhood punishable by death.[9] Additionally, Jehovah's Witnesses have been banned since 1964 as an alleged politically motivated Zionist organisation, although this religious group is apolitical and is not Zionist.

Marriages are registered according to religious sect but in mixed marriages where one partner is Christian, the union needs to be registered as Islamic. A Muslim woman cannot marry a Christian man, but a Christian woman can marry a Muslim man. If a Christian woman marries a Muslim man, she is not allowed to be buried in a Muslim cemetery unless she has converted to Islam. Polygamy is legal for Muslim men, but few practice it. A caveat in the Personal Status law for Muslims stipulates

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[8] Rachel Foran, "Salafism in Syria". *Harvard Divinity School.* http://rlp.hds.harvard.edu/faq/salafism-syria [accessed 25 May 2018].

[9] "Syrian Arabic Republic". https://www.equalrightstrust.org/ertdocumentbank/Microsoft%20Word%20-%20Syria%20final%20version1.pdf [accessed 25 May 2018].

that polygamy is illegal for Druze, who are otherwise covered by the personal status law for Muslims.

All mosques and churches are subject to surveillance by the *mukhabarat*, the state security apparatus of spies and informers.

Current Challenges

The main challenge for all religious groups is the restoration of peace and security in Syria. Both Assad's regime and ISIS have been accused of committing war crimes and crimes against humanity on the people of Syria. Unfortunately, the increasing internationalisation of the civil war does not provide any hope for a solution in the short term.

Reports of Yazidi living in Syria vary. Many Yazidi lived in the Sinjar region of northwestern Iraq, close to the border of Syria, and therefore may also reside in Syria. However, Yazidi in that region were attacked and killed or captured by ISIS in August 2014. Survivors who escaped from ISIS report that they were taken to Raqqa, Syria. Reports indicate that there are still approximately 3,000 Yazidi in ISIS captivity.[10] The non-profit organisation Yazda reports that there are approximately 5,375 refugees in Syria with between 3,000 to 3,500 in Camp Newroz.[11]

Holy Sites and Artifacts Destroyed by ISIS (Syria)

In Palmyra generally:

- *SHRINE OF IMAM NAWAWI* in January 2015, *THE TEMPLE OF BAAL SHAMIN* – It was one of Palmyra's best-preserved

[10] See chapter on Iraq.

[11] https://www.yazda.org/wp-content/uploads/2017/07/Yazidis-Refugees-in-Greece-Turkey-and-Syria-6.10.2015finalversion.docx.pdf [accessed 25 May 2018].

buildings, originally dedicated to a Phoenician storm god, and *THE TEMPLE OF BAAL*.

- *MAR ELIAN MONASTERY* – A Christian monastery dedicated to a 4th century saint in the Syrian town of al-Qaryatain near Palmyra. It was an important pilgrimage destination and home of Syrian Christians.
- *APAMEA* – A trading city from Roman times that has been looted for artefacts.
- *DURA-EUROPOS* – Home of "the world's oldest known Christian church", a synagogue, temples and other Roman-era buildings.
- *MARI* – A historically Jewish city from 2900 BC that contained ancient palaces, temples and other artefacts.
- *ASSYRIAN CHRISTIAN VIRGIN MARY CHURCH* – In Tel Nasri.
- *MONASTERY OF ST. ELIAN.*[12]

[12] Andrew Curry, "Here Are the Ancient Sites ISIS Has Damaged and Destroyed" http://news.nationalgeographic.com/2015/09/150901-isis-destruction-looting-ancient-sites-iraq-syria-archaeology/ [accessed 25 May 2018].

13

PAKISTAN

Göran Gunner

The present Constitution of Pakistan from 1973 declares the state to be the Islamic Republic of Pakistan. Article 2 of the Constitution declares Islam to be the state religion and the President must be a Muslim and should have faith in the oneness of the Allah and the finality of the prophethood of Muhammad. Article 25 states that "[a]ll citizens are equal before law and are entitled to equal protection of law". No citizen should be discriminated based on religion for "appointment in the service of Pakistan" (article 26). Article 20 talks specifically about the freedom to profess religion and to manage religious institutions:

> Subject to law, public order and morality:
>
> (a) every citizen shall have the right to profess, practice and propagate his religion; and
>
> (b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.

At the same time, the Constitution highlights the Islamic way of life.

> (1) Steps shall be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance

> with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah.
>
> (2) The state shall endeavour, as respects the Muslims of Pakistan:
>
> (a) to make the teaching of the Holy Quran and Islamiat compulsory, to encourage and facilitate the learning of Arabic language and to secure correct and exact printing and publishing of the Holy Quran;
>
> (b) to promote unity and the observance of the Islamic moral standards; and
>
> (c) to secure the proper organisation of zakat, [ushr,] auqaf and mosques.

Religious groups of non-Muslims in minority position in Pakistan are legally recognised as "minorities". Article 36 in the Constitution calls the State to "safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services". Such a recognition should provide effective rights protection but the reality is very different. In addition, in 2010, Pakistan ratified the International Convention on Civil and Political Rights (ICCPR). Formally, Pakistan is bound by article 27 providing:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

But even if there is a legal framework for freedom of religion and equal treatment of all citizens, the reality is different with governmental

restrictions and social hostilities. It is even possible to talk about institutionalised persecution of religious non-Muslim Pakistanis.

Religious Extremism and Mob Violence

This said, the Pew Research Center rates Pakistan among the top ten states with very high social hostilities involving religion.[1] Resurgence of religious extremism, militarisation of religion, religious intolerance and open persecution against religious groups not belonging to the majority population are increasing. The majority, 96%, of the population is Muslim divided into 85% Sunni and 15% Shi'a. Sunni extremist groups have regularly committed killings, bombings and other abuses against the Shi'a Muslims in sectarian violence. But, also members of other religious groups are targeted in severe social hostilities. That goes for the Christians (1.6%), Hindus (2%), Sikhs, and not the least Ahmadis. Worship-places are attacked, bombed or burned down. Persons belonging to the non-Muslim religious communities are also facing mob violence and killings in villages and city suburbs. When talking about persecution of the different religious groups being in minority situation it is also necessary to mention the blasphemy laws, forced conversions, discrimination and even the security measures to be taken as protection of the non-Muslims.

One of the deadliest attacks took place in Peshawar on 22 September 2013 with a twin suicide bomb attack. The target was the All Saints Church belonging to Church of Pakistan. An Islamist group claimed responsibility for the attack and stated that the attack on non-Muslims will continue since they are the enemies of Islam. Prime Minister Nawaz Sharif condemned the attack. The detonating bomb inside the church was

[1] "Countries with very high government restrictions on religion". *PEW*. http://www.pewforum.org/2017/04/11/rise-in-countries-with-very-high-government-restrictions-on-religion-in-2015/pf-04-11-2017_-restrictions-01-03/ [accessed 15 Oct. 2017].

devastating for the congregation. A congregation of about 500 people was attending the church; 127 people were killed and 170 injured.[2]

The Blasphemy Laws

The Blasphemy Laws are rooted back to the Indian Penal Code from 1860 and with amendments in the 1920th with the aim of protecting a religious assembly from disturbance, burial sites from malicious trespass and religious feelings of any person from being deliberately insulted. The basic idea was to tolerate and protect all religions in India. In order to gain political legitimacy, General Zia-ul-Haq, who took power in a military coup, initiated a wave of Islamization in Pakistan beginning in the late 1970th. During his presidency, a section 295-C was added to the Blasphemy Laws by an act of the parliament in 1986. It became a criminal offence to use derogatory remarks in respect of the Holy Prophet, Mohammad. The offence became punishable with life imprisonment or death.

> Whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.

A special section – 298-C was aimed at the Ahmadi (Qadiani) community. The people belonging to the Ahmadi faith were prohibited from declaring themselves to be Muslims as well as from preaching or propagating their faith. This can be looked upon as a method of institutionalised persecution against the Ahmadis in Pakistan.

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[2] "Peshawar All Saints' update". *ACNS.* http://www.anglicannews.org/news/2013/10/peshawar-all-saints-update.aspx [accessed 15 Aug. 2017].

Today the Blasphemy Laws is, by all four Sunni schools of thought, considered an unpardonable offence. The law is supported by the parliament, by the Federal Sharia Court, on television channels, and so on, and has a deep stronghold in the mind of the Pakistani majority population. It is clear that the laws can target Muslims but the laws and the use of them serve also as a tool for the persecution of religious groups. In the day to day situations there is also a misuse of the law accusing persons out of a lot of different personal reasons and accusing persons belonging to non-Muslim religions to settle personal scores.

Even if the majority of persons being accused of blasphemy has been Muslims, taking into account the percentage, other faiths is disproportionately higher compared to the overall population.

One of the most well-known cases may be the accusation of Aisa Bibi, a Christian woman. She had an argument with a group of Muslim women when harvesting berries. The other women became angry because she was drinking the same water. Aisa Bibi was accused of insulting the prophet Muhammad and thereby of committing blasphemy. November 2010, she was sentenced to death by hanging on a charge of blasphemy. The Governor of Punjab, Salmaan Taseer, defended her case but was assassinated by his security guard. Minority Affairs Minister Shahbaz Bhatti, also supported her but was shot dead by gunmen who ambushed his car. Successive appeals to the Supreme Court have been rejected. If the court upholds Bibi's conviction, she can become the first woman in Pakistan to be executed over a blasphemy allegation. October 2018, the Supreme Court overturned the 2010 death penalty verdict and Aisa Bibi was set free but with heavy protection. The verdict set off violent protests and clashes with the police by hardliners supporting strong blasphemy laws. The verdict has been seen as a landmark ruling when the Supreme Court protected a Christian citizen. Aisa Bibi is just one example. About this situation, the Human Rights Commission of Pakistan concludes:

> There have been several incidents where mobs of zealots have killed or assaulted blasphemy accused. The accused who are taken into police custody are somewhat safer. However, there have been cases of some accused facing violence in custody, sometimes even at the hands of policemen.[3]

An expert group noted "that mob violence against those accused of blasphemy or desecration of the holy Quran had been an oft-repeated occurrence".[4]

Forced Conversions

In its meeting on November 26, 2016, the senate body proposed that a law should be issued to ensure that no one was able to force anyone to convert to another religion and that doing so should be declared a crime. However, the Council of Islamic Ideology (CII) in a meeting soon afterwards strongly opposed any such legislation. Cases of forced conversions are reported from the Christian community but not the least from the Hindu community and specifically in the Sindh province. An article from mid-August 2017 reports:

> While Hindu activists and families allege that young girls are abducted, coerced into converting to Islam, and married off to Muslim men in an organized manner, Muslim religious activists and leaders are defensive about conversions, believing that converting someone to Islam is a way of earning blessings. These conversions are often backed by powerful shrines, seminaries, and clerics, as well as local politicians. Seminaries and shrines protect

[3] "Freedom of thought, conscience and religion". *Human Rights Commission of Pakistan.* http://hrcp-web.org/hrcpweb/wp-content/uploads/2016/04/freedom-of-thought.pdf [accessed 15 Aug. 2017].

[4] *Access to Justice for Religious Minorities*. Human Rights Commission of Pakistan, 2014.

> the couple and say the girl willingly eloped, converted, and married.[5]

The existing legal structures in Pakistan regulating marriage for non-Muslims are at a high degree regulated by religious leaders. Among the non-Muslims, Christians, and Parsis do have laws regulating marriage procedures while other religious communities are governed by their own customs and personal laws.[6] The implication is that the state does not have any registration for such marriages. Even if the community look upon a couple as married, the majority society may have a different opinion. This causes problems for Hindu women to obtain identification documents and under age (18 years) marriages cannot be annulled. And since there is no registration documents, women married according to Hindu tradition cannot prove an existing marriage before the court it opens up for forced conversions and a marriage according to Muslim tradition.

A consequence of the existing regulations is that voluntary conversion to Islam by non-Muslim males can be a tool to move out of marriage since conversion to Islam leads to automatic annulment of marriage. This will place the woman either as unmarried or getting into a situation of polygamous relationship.

Discrimination

The social status for Christians and Hindus is traditionally very low in Pakistani society. The Pakistani Hindus belong to the Dalits (Scheduled Castes) and the Christians to "traditional castes that performed janitorial

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[5] Saba Imtiaz, "Hindu Today, Muslim Tomorrow". *The Atlantic.* https://www.theatlantic.com/international/archive/2017/08/hindu-muslim-pakistan/536238/ [accessed 15 Aug. 2017].

[6] Tahir Mehdi, *Religious Minorities and Marriage Laws in Pakistan*. Community World Service, 2014.

work".[7] This has created a situation of discrimination in relation to for example public sector schools, admission to higher education and access to private sector institutions. Different welfare schemes run by federal and provincial governments are not sensitive in relation to the needs of non-Muslim communities. One solution asked for to solve the discrimination is to increase/introduce special quotas for non-Muslims. The Pakistani Human Rights Commission states: "Discrimination in the Constitution and in other laws should be done away with to send a clear message of equality of all citizens, irrespective of religious belief, before the law".[8]

Also, another problematic situation for non-Muslims appears on relation to the public school-system. Islamiyat is a compulsory subject in the curriculum. Even if non-Muslims are theoretically given a choice to study 'ethics' instead they are in practice forced to study Islamiyat. In a report concerning the content of Pakistani public school-textbooks when describing non-Islamic faiths and non-Muslims are characterised as "to teach bias, distrust, and inferiority". Moreover, the textbooks portray "Pakistani Christians as Westerners or equal to British colonial oppressors, and Pakistani Hindus as Indians, the arch enemy of Pakistan". The message to the students from early years and clear when the non-Muslim population of Pakistan are described as outsiders and unpatriotic.[9]

The situation of insecurity, discrimination and hopelessness have resulted in efforts from non-Muslims to migrate to other countries. But mainly resulting is new problems facing asylum processes.

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[7] *Evening it Out. Case for reforms in quota/reservation policies for religious minorities of Pakistan*. Community World Service, 2015.

[8] *Access to Justice for Religious Minorities*. Human Rights Commission of Pakistan, 2014.

[9] Teaching Intolerance in Pakistan: Religious Bias in Public School Textbooks. U.S. Commission on International Religious Freedom, 2016. https://www.uscirf.gov/sites/default/files/Teaching%20Intolerance%20in%20Pakistan.pdf [accessed 23 Apr. 2019].

> There were reports of members of religious minorities, including Hindus, Christians and Ahmadis, migrating to other counties because of fear of faith-based violence, while some sectarian minorities were displaced within Pakistan. The citizens who moved abroad faced many hardships, including Christians who had traveled to Sri Lanka and Thailand in the hope of seeking asylum there or in a third country, but had been stuck there without any hope of finding a permanent sanctuary.[10]

Security Measures

The Pakistani authorities are taking security measures in order to protect the non-Muslim communities. The churches and church-related organisations and institutions are required to take measures protecting their buildings through walls, guards and TV-monitoring. All this is financially a burden for the communities, but may give better protection.

President Mamnoon Hussain gave a message the ceremony of National Minorities Day 2017 saying: "all possible measures will be taken to promote religious harmony" and that "the values of brotherhood and equal treatment to all citizens of the country are embedded in our minds and if any citizen of the country faces any hardship then all of us feel his pain".[11]

Despite the rather problematic situation the Christian communities and church-related institutions and organisations are flowering and active. Church bells are calling for service and churches are crowded with faith-

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[10] "Freedom of thought, conscience and religion". *Human Rights Commission of Pakistan.* http://hrcp-web.org/hrcpweb/wp-content/uploads/2016/04/freedom-of-thought.pdf [accessed 15 Aug. 2017].

[11] "President's Secretariat". http://www.presidentofpakistan.gov.pk/img/pr110817.pdf [accessed 15 Aug. 2017].

full believers. The work also goes on with for example empowerment, social work, youth activities and peace and social harmony building.

14

INDIA

Roger Gaikwad and Samuel Jayakumar

India is one of the vast countries with extraordinary characteristics and diversity in terms of its geographical, linguistic, religious, social-cultural features, and so on. Undoubtedly, India is a museum of various customs, cultures, creeds, social systems, races and tongues. It is the birthplace of four major religions in the world – Hinduism, Buddhism, Jainism and Sikhism. Christianity and Islam are also practiced in this subcontinent for a very long time.

The Legal Basis

India became an independent country in 1947. Its Constitution came into effect in 1950. The preamble to the Constitution of India says:

> WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:
>
> JUSTICE, social, economic and political;
>
> LIBERTY of thought, expression, belief, faith and worship;
>
> EQUALITY of status and of opportunity; and to promote among them all

> FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;[1]

Freedom of Religion or Belief

"Liberty of thought, expression, belief, faith and worship" mentioned in the Preamble is further substantiated by the "Right to Freedom of Religion" in Articles 25-28 of the Constitution[2]:

> Article 25 – Freedom of conscience and free profession, practice and propagation of religion.
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> Article 26 – Freedom to manage religious affairs.
>
> Article 27 – Freedom as to payment of taxes for promotion of any particular religion.
>
> Article 28 – Freedom as to attendance at religious instruction or religious worship in certain education institutions.

In order that the culture and religion of the minority communities is not swamped by the majority community, Article 29 assures that the state shall not impose on a minority community any culture other than its own; and, Article 30 grants the minority communities the right to establish and administer their own educational institutions.

The Secular Character of the Country

Even though all the basic principles of secularism were incorporated in the various provisions of the Constitution, at the time when the Constitution was enacted, the word secularism was not mentioned in the

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[1] Cf. "Constitution of India". *india.gov.in.* https://www.india.gov.in/my-government/constitution-india/constitution-india-full-text [accessed 15 Oct. 2018].

[2] Cf. "Freedom of Religion" *SRD Law Notes.* https://www.srdlawnotes.com /2018/08/freedom-of-religion-article-25-to-28-of.html [accessed 15 Oct. 2018].

Preamble[3]. Only twenty-five years later, for describing the character of the country, the term secularist was added, along with the term socialist, to the Preamble of the Indian Constitution by way of the 42nd Amendment in 1976.

The constitutional provisions of secularism prohibit the establishment of a theocratic State and prevent the State from identifying itself with or favour any particular religion. Secularism is not a passive attitude of religious tolerance; it is a positive concept of equal treatment of all religions.

Institutional Framework

The Constitution of India provides for a single integrated judicial system with the Supreme Court at the apex, High Courts at the middle (state) level and District Courts at the local level. It also provides for an independent and powerful judicial system. Judiciary in India acts as the guardian protector of the Constitution and the fundamental rights of the people.

The Supreme Court of India,[4] as the *final court of appeal* of the country, takes up appeals primarily against verdicts of the *high courts of various states of the Union* and other courts and tribunals. It safeguards *fundamental rights* of citizens and settles disputes between various governments in the country. As an advisory court, it hears matters which may specifically be referred to it under the *Constitution* by *President of India*. It also may take cognizance of matters on its own (or *suo moto*), without anyone drawing its attention to them. The law declared by the

[3] Cf. "Why secularism and socialism are integral to the Indian Constitution" *livemint.* https://www.livemint.com/Opinion/XKcwMBM2WpKX7TM20yPBBP/Why-secularism-and-socialism-are-integral-to-the-Indian-cons.html [accessed 15 Oct. 2018].

[4] Cf. "Supreme Court of India" *SCI.* https://www.sci.gov.in/history [accessed 15 Oct. 2018].

Supreme Court becomes binding on all courts within India and also on the union and state governments.

The National Human Rights Commission (NRHC)[5] is an autonomous statutory body established in 1993 according to the provisions of the Protection of Human Rights Act. The purpose of the NHRC is, *suo moto* or through the petition of a person, to investigate the violation of human rights or the failures of the state or other to prevent a human rights violation. The Commission can visit state institutions where people are detained such as jails to examine the conditions of the institutions and make sure they are in compliance with human rights provisions. They can also examine any law or constitutional provisions to ensure that the safeguards of the law protect human rights. They are to advise the state on measures to prevent terrorism and related violations as well as on how to effectively implement provisions of human rights treaties. The commissions may also take on research about human rights, create awareness campaigns through various mediums, and encourage the work of NGOs.

The National Commission for Minorities (NCM)[6] was formed under the National Commission for Minorities Act of 1992. Its jurisdiction extends to the whole of India except the state of Jammu and Kashmir. Six religious communities – Muslims, Christians, Sikhs, Buddhists, Zoroastrians and Jains (the last group being included in January 2014) are notified as minority community. The NCM Act lists nine functions of the Commission:

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[5] Cf. "All you need to know about Human Rights Commission in India" *Pleaders.* https://blog.ipleaders.in/human-rights-commission-of-india/ [accessed 15 Oct. 2018].

[6] Cf. "National Commission for Minorities" *india.gov.in.* https://services.india.gov.in/service/detail/national-commission-for-minorities-1 [accessed 15 Oct. 2018].

a) to evaluate the progress of the development of minorities under the Union and states;

b) to monitor the working of safeguards provided in the Constitution and in union and state laws;

c) to make recommendations for effective implementation of safeguards for the protection of minority interests;

d) to look into, and take up, specific complaints regarding deprivation of rights and safeguards of minorities;

e) to get problems of discrimination against minorities studied, and recommend ways to remove them;

f) to conduct studies, research, analysis on socioeconomic and educational development of minorities;

g) to suggest appropriate measures in respect of any minority to be undertaken by central or state governments;

h) to make periodic or special reports to the Centre on any matter concerning minorities; especially their difficulties;

i) to take up any other matter which may be referred to it by the central government.

Seventeen States – Andhra Pradesh, Assam, Bihar, Chhattisgarh, Delhi, Jharkhand, Karnataka, Kerala, Maharashtra, Madhya Pradesh, Manipur, Punjab, Rajasthan, Tamil Nadu, Uttarakhand, Uttar Pradesh and West Bengal have set up State Minority Commissions in their respective states.

Challenges

While the Constitution and the State have provided for religious freedom in India; and the judiciary, by interpreting the various provisions, has ensured that the spirit of secularism and essence of freedom of religion or

belief is maintained, the communal undertone in India is highly visible. To elaborate:

1) *Discrimination against Christian Dalits and Muslim Dalits*:[7] The policy of protective discrimination provides the Scheduled Castes and Scheduled Tribes entitlements in order to bring about welfare to the two communities. While Scheduled Tribes as a category are entitled to the provisions of the policy, Scheduled Castes that have converted to Christianity and Islam are kept out of it. The very year, 1950, in which India adopted its Constitution affirming the freedom of religion or belief and the secular spirit of the government, a Presidential Order was passed in which Clause 3 read, "No person who professes a religion different from Hinduism shall be, deemed to be a member of Scheduled Caste". Thus, Dalit Christians and Dalit Muslims are not entitled to any affirmative action benefits. As a result, they lose entitlement to reservation both as religious minorities and as Scheduled Castes.

The Presidential order 1950 was amended first in 1954 to include Sikhs of Scheduled Castes background and again in 1990 to include Buddhist Scheduled Castes. Only Christians and Muslims of Scheduled Castes background were excluded. "The assumptions underlying the state policy clearly unfold the big divide between 'national' and 'alien' religions. The benefits are fully conceded to those who convert to 'Indian' religions, but converts to 'alien' religions are denied these benefits. This is despite the enormous evidence available that the Scheduled Castes converts to Islam and Christianity continue to be victims of untouchability not only at the hands of caste Hindus, but also at the hands of their co-

[7] Cf. Ravish Tiwari "Dalit Muslims, Dalit Christians & quota: What is it all about?" https://economictimes.indiatimes.com/articleshow/49651516.cms? Utm _source=contentofinterest&utm_medium=text&utm_campaign=cppst https://economictimes.indiatimes.com/news/politics-and-nation/dalit-muslims-dalit-christians-quota-what-is-it-all-about/articleshow/49651516.cms [accessed 15 Oct. 2018].

religionists who trace their social origins to upper castes. Thus, the converts to Islam and Christianity of Scheduled Castes origin are twice-deprived and twice-alienated".

2*) Freedom of Religion Acts:*[8] India's Freedom of Religion Acts or "anti-conversion" laws are state-level statutes that have been enacted to regulate religious conversions. The laws are in force in eight out of twenty-nine states: Arunachal Pradesh, Odisha, Madhya Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, and Uttarakhand. While there are some variations between the state laws, they are very similar in their content and structure. All of the laws seek to prevent any person from converting or attempting to convert, either directly or otherwise, another person through "forcible" or "fraudulent" means, or by "allurement" or "inducement".

As can be expected, the effect of the Acts has been disturbing. Far from protecting religious freedom, reports from the various minority communities and human rights agencies reveal that these laws foster hostility. In several states, prosecutions have been launched under the Freedom of Religion Acts against members of the minority Christian community. There have also been frequent attacks against the community by members of right-wing Hindu groups under the pretext of 'forcible' conversions.

Anti-conversion laws fail to achieve the very purpose for which they have been enacted. Instead, they provide an opportunity for divisive forces to target the constitutionally-protected rights of minority groups and pose a serious threat to the free practice and promotion of religious beliefs. Furthermore, the laws fail to account for the agency of converts and treat them instead as passive recipients of external (and seemingly unwanted) pressures from 'predatory' convertors. They tend to treat all

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[8] Cf. "India and its Anti-conversion laws" *ADF. international* https://adf international.org/commentary/india-and-its-anti-conversion-laws/ [accessed 15 Oct. 2018].

religious conversions as suspect and liable to investigation and prosecution.

3) *Cow Vigilantism*: In *India,* where *cows are venerated* by a large segment of the population[9], cow vigilante violence involving mob attacks in the name of "cow protection" targeting mostly Muslims, has swelled since 2014. Cattle slaughter is banned in most states of India. Recently emerged cow vigilante groups, claiming to be protecting cattle, have been violent leading to a number of deaths. Cow-protection groups see themselves as preventing theft, protecting the cow or upholding the law in an Indian state which *bans cow slaughter*. Indian authorities frequently do not prosecute members of vigilante cow-protection groups who attack alleged smugglers, consumers, or traders of beef, usually Muslims, despite an increase in attacks compared to previous years.

4) *Hate Speeches*:[10] A speech that attacks a person or group on the basis of attributes such as race, religion, ethnic origin, sexual orientation, disability, or gender is called hate speech. Right wing bodies have used the tactic of hate speech very effectively especially in the cow belt of India. They have unleashed several individuals – elected representatives and otherwise – who make speeches filled with hatred for the minorities and incite the crowd to "take matters into their own hands", with complete impunity.

5) *Communal Riots*:[11] Today communalism has infected all walks of life. Riots have been used to teach Muslims a lesson for the real and or

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[9] Cf. "'Cow vigilantism'" in India". *The Economist* https://www.economist.com/the-economist-explains/2018/02/15/cow-vigilantism-in-india [accessed 15 Oct. 2018].

[10] Cf. "Under Modi Government, VIP Hate Speech Skyrockets – By 500%" *NDTV*. https://www.ndtv.com/india-news/under-narendra-modi-government-vip-hate-speech-skyrockets-by-500-1838925 [accessed 15 Oct. 2018].

[11] Cf. Faizan Mustafa, "Freedom of Religious in India: Current Challenges". https://www.religiousfreedominstitute.org/cornerstone/2016/7/19/freedom-of-religious-in-india-current-challenges [accessed 15 Oct. 2018].

imagined sins of 700 years of Muslim rule and for partitioning the country. The goal has been to terrorise Muslims into complete submission as subjects and to insti ll fear in them so that they do not claim their rights as citizens. Riots are a substitute when total genocidal operation seems an obvious impossibility.

6) *Related Expressions of Majoritarian Communalism:*[12]

- silencing rationalist thinkers like Narendra Dhabholkar, Govind Pansare, and M. M. Kalburgi;
- issuing of stamps to honor Yogi Adityanath, who led the Ram temple movement, which led to demolition of historic Babri Mosque;
- frequent condemnation of Nehruvian secularism;
- packing of institutions with rightist elements; secularists are removed even prior to end of their terms;
- denial of jobs: "We do not hire Muslims," a Mumbai Company responded within house;
- Vishva Hindu Parishad's demand of construction of Ram temple in Ayodhya;
- denial of Houses to Muslims including Muslim celebrities.

India is a country of many races, many religions – whosoever sets one community against another, degrades all its citizens!

[12] Ibid.

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EGYPT

Christian Solidarity Worldwide

The Era of the Republic

Egypt's monarchy was abolished in 1952 following a military coup led by Colonel Jamal Abdel Nasser. A socialist and Arab Nationalist, Nasser imposed strict government control on the economy and abolished political parties and the free press. He also made religious education a mandatory subject in the curricula and established Al Azhar University, which only accepts Muslim students. Under Nasser, the Coptic community was prohibited from holding high positions in the government and military. Due to Nasser's policies emigration levels amongst Copts rose sharply.

Following Nasser's death in 1970, Anwar Al-Sadat came into power.[1] In response to Sadat's attempts to liberalise the economy, socialist and communist groups and labour unions organised strikes and protests. To counter and contain these groups, Sadat empowered and enabled Salafi[2]

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[1] Abba Seraphim, "The Coptic Orthodox Church under Islam: The Arab Conquest". The British Orthodox Church. http://britishorthodox.org/miscellaneous/the-coptic-orthodox-church-under-islam/ [accessed 15 Nov., 2018].

[2] Joas Wagemakers defines Salafism as "a branch of Sunni Islam whose modern-day adherents claim to emulate 'the pious predecessors' (*al*-salaf al-ṣāliḥ; often

groups such as the Muslim Brotherhood to dominate public spaces and intimidate socialists, liberals, and nationalists. As they became more organised and confident, Islamists[3] began attacking Coptic churches, houses and shops, and police and other security agencies failed to prevent the escalation in sectarian violence – and were sometimes complicit in it. Once Sadat sensed the Islamists were threatening his own authority, thousands of militants and clerics were arrested and imprisoned.

Nevertheless, violence against Christians continued to intensify between 1978 and 1979 and Copts protested Sadat's decision to make *Shari'a*[4] the main source of legislation. In 1980, Sadat accused Pope Shenouda III of plotting to undermine state security and exiled him to a monastery in the Sinai desert. The Pope was kept under house arrest for four years until his re-appointment in 1985.

Sadat was assassinated by Islamists in 1981 and his deputy, Hosni Mubarak, assumed power. Under Mubarak, the state continued to

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equated with the first three generations of Muslims) as closely and in as many spheres of life as possible". Joas Wagemakers, "Salafism", Oxford Research Encyclopaedia of Religion, 5 Aug. 2016. http://religion.oxfordre.com/view/10.1093/acrefore/9780199340378.001.0001/acrefore-9780199340378-e-255 [accessed 23 Apr. 2019].

[3] 'Islamist' refers to an Islamic political or social activist who aims to implement their 'ideological vision of Islam in the state and/or society'. "Islamist". In *The Oxford Dictionary of Islam,* edited by J. L. Esposito. *Oxford Islamic Studies Online***.** http://www.oxfordislamicstudies.com/article/opr/t125/e1128 [accessed 15 Nov. 2018].

[4] *Shari'a* (Islamic Law) is derived from the teachings within the Qur'an and Sunnah (normative practices of the Prophet). Because these sources do not offer explicit legal codes, the principles and rules they contain have been systematised into law through juridicial methodology (usul al-fiqh). Abdullahi Ahmed An-Na'im (2010), "The Compatibility Dialectic Mediating the Legitimate Coexistence of Islamic Law and State Law", *Modern Law Review* 73:1 (2010) 1-29, 7-8. https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1468-2230.2009.00782.x. [accessed 15 Nov. 2018].

discriminate against Copts in areas such as university admissions, public spending and military promotions. The curriculum also ignored the Coptic era in Egyptian history and the media continued to incite hatred against them. Furthermore, up until 2005, presidential approval was required for repairing churches. Whilst approval has since been delegated to local and regional authorities, applications continue to experience deliberate obstructions and delays.

After the Egyptian revolution of 2011, President Mubarak was forced to step down and a Muslim Brotherhood president, Mohammed Morsi, was elected in June 2012. On 22 November 2012, massive demonstrations erupted in major cities after Morsi announced a temporary constitutional decree that granted him extensive powers. Morsi viewed the decree as necessary to protect the elected constituent assembly from a planned dissolution by judges who had been appointed during the Mubarak era.[5] He also appointed a number of hard-line Islamists in different positions within the administration, some of whom were involved in sectarian violence. By January 2013, almost 100 Copts had died in sectarian conflicts, surpassing the total deaths in the previous decade. President Morsi was removed and sent to prison following a coup in July 2013.

Current Situation

Attacks against Copts subsequently escalated due to the Copts' perceived support for Abdel Fattah el-Sisi and the coup. Levels of violence peaked in August 2013, with attacks on priests, abductions of women, and frequent assaults on churches and Christian properties. Instances of local imams affiliated with the Muslim Brotherhood inciting violence against

[5] Stephanie McCrummen and Abigail Hauslohner, "Egyptians take anti-Morsi protests to presidential palace". *The Washington Post*, 5 Dec. 2012. https://www.independent.co.uk/news/world/africa/egyptians-take-anti-morsi-protests-to-presidential-palace-8385721.html [accessed 15 Nov. 2018].

Christians were also reported. In January 2015, Coptic leaders in Minya were forced to cancel Christmas celebrations after two policemen were gunned down while guarding a Coptic church.

However, Copts appear to have benefited under Sisi's rule to some extent. For example, Egypt's national elections of October 2015 saw Christians win 36 parliamentary seats, an unprecedented 6% of the total seats. Furthermore, Sisi has sought to engage with the Coptic Church leadership, which is reflected in his attendance of Coptic Christmas Eve services in January 2015 – the first time a head of state has done so. Sisi has repeated this gesture each year since, gaining the support of the leadership of the Coptic Orthodox Church. Yet, many hold opinions at odds with the church leadership. In September 2016, 800 prominent Coptic figures issued a statement highlighting their concerns regarding the church's growing closeness to the regime and the negative impact this might have on the Coptic community.

State institutions continue to restrict the ability of Christians to establish and maintain church buildings. Even when Christians have obtained permission to renovate or build new churches, local Muslims have blocked their attempts to do so. Consequently, Christians have been obliged to make concessions, such as building churches without a bell or tower. In addition, a new law on church construction was passed in August 2016, which many Christian activists have critiqued for its normalisation of existing patterns of discrimination. The new law delegated the power to build and renovate churches to provincial governors. Human rights activists have described the law as "prejudiced and sectarian," as it shows that the state favours one religion over another.[6]

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[6] Ahmed Aboulenein and Mohamed Abdellah, "Egyptian parliament approves long-awaited church building law". *Uk.reuters.com*, 30 Aug. 2016. https://uk.reuters.com/article/uk-egypt-politics-religion/egyptian-parliament-

Disputes and tensions around church construction have played a major role in the outbreak of sectarian violence, particularly in Minya governorate in Upper Egypt. Egyptian authorities have routinely failed to protect the rights of Christian citizens and, in lieu of judicial remedies, local disputes tend to be addressed through informal 'reconciliation' sessions that contribute to intolerance and impunity.[7]

Whilst there have been improvements for some religious minorities during President Sisi's term in office, FoRB continues to be suppressed in specific localities and as part of wider restrictions on human rights across the country. Egypt improved constitutional protections for FoRB for 'the heavenly religions', namely Sunni Islam, Christianity and Judaism, and President Sisi demonstrated personal support for the equal treatment of the Coptic community. However, these improvements are incongruent with the lack of legal clarity regarding the status of other minority religious groups; an increase in blasphemy cases; continuing outbreaks of sectarian violence, particularly in Upper Egypt, and inadequate intervention from the security services to prevent and/or bring it to an end. In addition, reports of Christian girls being abducted, forced to convert and marry Muslim men continue to persist. There has also been a failure of judicial services to convict those responsible for sectarian attacks; the continued use of reconciliation meetings following sectarian violence, which often deprives victims of justice and adequate compensation; an abiding societal hostility towards, and legal restrictions

approves-long-awaited-church-building-law-idUKKCN1152KM [accessed 15 Nov. 2018].

[7] "Copts of Egypt", *Minorityrights.org*, Oct. 2017. http://minorityrights.org/minorities/copts/ [accessed 15 Nov. 2018].

on, the construction of houses of worship by non-majority faith communities; and an increase in the targeting of atheists.[8]

Current Concerns

Sunni Islamist Insurgencies

Sunni Jihadi militia are proactively attempting to seize power using, amongst other methods, religious cleansing and subjugation with a view to creating an Islamist regime governed by restrictive interpretations of *Shari'a*. They are particularly hostile to Christians, who are deemed agents of Western 'Crusaders' and 'supporters of President Sisi's regime'.

Underlying Long-Term Issues Mitigating Against FoRB

Chronic and comprehensive marginalisation and discrimination stemming from the long-term curtailing of civil, political, economic, social and cultural rights of the Coptic community.

Sectarian Violence, Incitement to Violence and Impunity

Sectarian violence occurs within the confines of a functioning state. Women are particularly vulnerable, as religious sectarianism and Jihadism are utilised to justify the abduction of women and children, sexual violence, rape and enslavement. Coptic Christian schoolgirls are often abducted and forced to convert and marry. Incitement to violence includes the dehumanising, denigrating and defaming of Christians through hate speech and false accusations.

Impunity arises when the state fails to take action either to prevent the violence/hate speech and so on, or to punish perpetrators once it has occurred. The state has been complicit in the violence on several occasions and victims are obliged to accept informal extra-legal

[8] See "Egypt: Freedom of Religion or Belief". *Csw.org.uk*, 14 Feb. 2017. https://www.csw.org.uk/2017/02/16/press/3458/article.htm [accessed 15 Nov. 2018].

resolution mechanisms that effectively deprive them of real justice or recourse to courts of law.

Constitutional Issues

An inclusive drafting process and the insertion of provisions in line with both articles 18, 19 and 20 of the UDHR (freedom of religion or belief (FoRB), freedoms of opinion and expression, freedom of peaceful assembly and association) need to be encouraged. Egypt ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 18 September 1981. However, it made reservations to the articles that grant women equal right to the nationality of their children (Article 9) and equal right to marriage, during marriage and at its dissolution (Article 16), on the grounds that "Islamic *Shari'a* provisions" accord women "rights equivalent to those of their spouses".[9] It explained that "this [reservation] is out of respect for the sacrosanct nature of the firm religious beliefs which govern marital relations in Egypt and which may not be called in question".[10]

Restrictive Legislative or Informal Practices

Restrictive regulations govern the repairing and building places of worship for non-Muslims. Other manifestations include restricted access to employment (especially in the army and security sectors) and education (some universities prevent Christian medical graduates from training in gynaecology). The existing school curricula also systematically excludes, obscures and limits the study of the historical contribution of the Coptic community to the nation.

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[9] Declarations, reservations, objections and notifications of withdrawal of reservations relating to the *Convention on the Elimination of All Forms of Discrimination against Women*, 10 Apr. 2006. *CEDAW/SP/2006/2*, 11, www.un.org/womenwatch/daw/cedaw/reservations.htm [accessed 15 Nov. 2018].

[10] Ibid.

Arbitrary/Indefinite Detention, Often Large Scale and/or Without Due Process

In many cases, detentions occur on spurious charges (with regard to the arrests of activists). Torture and cruel, inhuman and degrading treatment of detainees are commonly used by security agencies.

Restrictions on Freedom of Expression and Association

The Egyptian government has taken excessive measures to control the freedoms of expression and association, it is important to monitor and address such developments, since restrictions on these interrelated freedoms have a bearing on FoRB.

Equality Before the Law and Lack of Due Process

Minority faiths do not enjoy equality before the law. Christians are arrested for crimes committed against them and often receive longer sentences than co-accused Muslims. Inequality before the law and a lack of due process can also occur in cases that involve members of the majority religion who differ from the current government. Converts from Islam and reconverts (those who have converted to Islam and wish to return to their original faith) cannot easily change their religious designation on their birth certificates. They continue to receive threats and public harassment, although official harassment has eased.

16

NIGERIA

Khataza H. Gondwe

Nigeria's main religious communities are African traditional religions, Christianity, and Islam. While violations of freedom of religion or belief (FoRB) occur occasionally in the south of the country, injured parties generally can access justice. Consequently, this chapter focuses on the north, where violations occur more frequently, and religion is interwoven so inextricably into the political, social and ethnic fabric, that violence often unfolds along religious lines, even when the visible trigger is not religious.

Legal Protections

Protections for freedom of religion or belief are found in the federal Constitution.[1]

Article 38 (1) guarantees "freedom of thought, conscience and religion, including freedom to change religion or belief, and to manifest and propagate" one's beliefs "in worship, teaching, practice and observance" either alone or with others in public and private. Article 38 (2) stipulates students should not be obliged to receive religious

[1] "Constitution of the Federal Republic of Nigeria 1991" (as amended), Chapter IV, Fundamental Rights.

instruction or take part in or attend religious ceremonies or observances relating to a religion other than their own without approval from parents or guardians. Additionally, Article 18 (3) asserts that no religious community or denomination should be prevented from providing religious instruction for pupils from their community or denomination in any place of education maintained entirely by them.

Article 39 provides for freedom of expression, including the right "to receive and impart ideas and information without interference", while free assembly and freedom of association are articulated in Article 40. Article 42 (1) (a) and (b) state that no Nigerian should "be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions" on religious grounds, nor should anyone be accorded "either expressly by, or in the practical application of, any law … or any such executive or administrative action, any privilege or advantage". Article 15 (2) prohibits "discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties".

The Constitution proscribes the adoption of an official religion by individual states.[2] It also contains a clause outlining circumstances in which FoRB can be limited on the grounds of "defence, public safety, public order, public morality, or public health" in a manner that is "reasonably justifiable in a democratic society", and to "safeguard the lives and freedoms of others".[3] However, there is no definition of "reasonable justification", or of "a democratic society".

Nigeria has a dual legal system: one based on Common Law inherited from the colonial past with competencies to dispense capital punishment; the other, on Customary Law, under which religious laws are recognised. In addition, under Article 19 Section 204 of the Criminal Code Act,

[2] Article 10.

[3] Article 45: 1 (a) & (b).

anyone who intentionally insults a religion can face up to two years' imprisonment.

Nigeria is party to the African Charter on Human and Peoples Rights (ACHPR), which articulates the freedom of conscience, profession and practice of religion in Article 8, adding that "no-one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms". Nigeria has also ratified the International Covenant on Civil and Political Rights (ICCPR), which sets a high threshold for circumstances under which the right to manifest a religion or belief can be restricted.

Current Concerns

Despite constitutional and international protections for FoRB, full enjoyment of the right continues to be restricted, particularly for religious minorities in the north of the country where Islam predominates. The primacy of the Constitution is contested by those for whom *Shari'a* is the highest law, and who regard legal and political structures inherited from the colonial era as Western, and therefore "Christian". Not only is the constitutional guarantee for FoRB "not a shared value, but also the idea of the Constitution as the supreme law of the land is not shared by many Muslims".[4]

Some observers ascribe FoRB violations solely to social and political reasons, asserting that disputes are "basically about power and resources (including land, access to state resources or institutions which empower

[4] Jude O Ezeanokwasa PhD (Law), Boniface E Ewullum PhD (Law) and Obinna Onyebuchi Mbanugo LLM,LLB,BL, "Religious freedom and its limitations under the 1999 Constitution of Nigeria". *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 7 (2016) 66. https://www.ajol.info/index.php/naujilj/article/view/136239/125729 [accessed 15 Nov. 2018].

individuals and/or groups)".[5] For example, from 1999 onwards, 12 of Nigeria's 36 states enacted the *Shari'a* penal code under which both blasphemy and apostasy are punishable potentially by death, creating a de facto state religion in contravention of the Constitution. Initially it was strongly supported by the Muslim community, which felt *Shari'a* would deter corruption. In reality it arose from the perception of a loss of power by northern elites following the advent of democracy and a "Christian president". Over time it became clear that while the less privileged faced amputation for minor thefts, the privileged went unpunished, even after largescale thefts of state funds.

Freedom of Religion or Belief Violations

The creation of de facto state religion and of *hisba* or *Shari'a* enforcement police by *Shari'a* states also gave a semblance of legality to a pre-existing system of marginalisation of religious minorities dating back to the colonial era, if not preceding it. Under a system undergirded by societal hostility and often marked by spatial segregation, religious minorities generally have limited access to social amenities, development and even vaccination programmes. Those who complete primary education struggle to access higher education, and there are persistent reports of discrimination in gaining employment or promotion once employed.

Access to media is also restricted. The construction of churches is undermined by impediments to purchasing land, denials or delays in construction permissions, and the withholding of certificates of ownership. Religious institutions are often seized, closed or demolished arbitrarily, and although conversion is constitutionally guaranteed,

[5] Hakeem Baba Ahmed, OON, "Religious Freedom in Nigeria: Myth or Reality". *Carefronting,* 2013. https://carefronting.org/religious-freedom-in-nigeria-myth-or-reality-bonded-freedom-notes-on-religion-and-politics-in-nigeria/#more-561 [accessed 15 Nov. 2018].

conversion from Islam can result at best in ostracism (including loss of parents, spouse, and children), and at worst, in death or threats that oblige converts to flee and adopt low-profile existences elsewhere.

The Constitution contains a much-contested clause granting privileges, including political positions, to members of tribes indigenous to each state.[6] In practice, in *Shari'a* states, indigenous non-Muslims cannot access these privileges, while non-indigenous Muslims are allowed to do so.

Assertions that *Shari'a* only applies to non-Muslims if they agree to appear before *Shari'a* courts have proven erroneous. Not only are non-Muslims in Kano obliged to wear hijabs in public schools;[7] Christians have also been brought before *Shari'a* courts, and sentenced to *Shari'a* punishments. In 2009 a pastor in Kebbi state received 12 lashes and had to choose between a prison sentence and payment of a N10,000 (€11,000) fine to the court and N30,000 (€33,000) in compensation to parents whose daughter fled after the family converted to Islam and arranged a marriage for her.[8] Further, and in a stark example of the disregard in which the Constitution is held, a Christian from a tribe indigenous to Kebbi state who protested at the unconstitutionality of being brought forcibly before a *Shari'a* court was informed by the judge that "*your constitution*" might work elsewhere, but did not work in his court.[9]

Abductions, forcible conversion and forced marriages of minors in *Shari'a* states, and episodes of mob violence following spurious blasphemy accusations occur often. Perpetrators are rarely apprehended

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[6] Articles 14 (3); 15 (3) (b); 25 (1) (a); 147 (3); 223 (2) (b); 318 (1), *Chapter II fundamental objectives and directive principles of state policy….*

[7] "Kano State directs all school girls to wear Muslim Scarf". *IRIN News* 2003. http://www.irinnews.org/news/2003/09/01/kano-state-directs-all-school-girls-wear-muslim-scarf [accessed 15 Nov. 2018].

[8] "Nigeria: Visit Report", *CSW*, 2009, 4.

[9] "Victim Testimony" transcribed by *CSW*, 2009.

or tried, and victims generally receive neither justice nor compensation. Examples include the blasphemy-related beheading of Igbo trader Gideon Akaluka in Kano city in 1995 by a mob that allegedly included the current Emir of Kano,[10] and the lynching by students, townsfolk and a local gang of Christian teacher Christianah Oluwatoyin Oluwasesin in Gombe city following similar accusations in 2007.[11] More recently, in June 2016 Mrs Bridget Agbahime, a 74 year-old trader and the wife of a retired pastor, was battered to death in Kano city's Kofar Wambai market following a false blasphemy accusation by a fellow trader who had harassed her on several occasions and had received official warnings. Her tormentor was arrested along with four other men, but despite overwhelming evidence, all were released and declared innocent in November 2016.[12]

Decades characterised by a persistent lack of justice in these and other cases have emboldened perpetrators and fostered impunity. Impunity and the underlying discrimination create an enabling environment for the emergence of extremist religious sects that seek to restrict FoRB by imposing their unique and extreme interpretations of Islam throughout the country. These groups include the Maitatsine movement of the 1980s, the Islam Only movement of the 1990s, the Nigerian Taliban of the early 2000s, and more recently, Boko Haram, its offshoots, the (now-defunct) Ansaru group and the Islamic State West African Province (ISWAP, also known as the al Barnawi faction), and the Fulani herder militia, which enacts a campaign of ethno-religious cleansing and land occupation.[13]

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[10] Karl Maier, "Beheading stirs tension". *The Independent*, 1995; "Lamido Sanusi fingered in the beheading of Igbo man in Kano". *CKN Nigeria*, 2014.

[11] "No justice for brutal murder of Nigerian school teacher by students". *CSW media release*, 2007.

[12] "Suspects in murder trial discharged", *CSW media release*, 11 Nov. 2016.

[13] "General Briefing: Nigeria". *CSW*, 2018, 2.

Intra-Religious Violations

On 25 June 2015, the Upper Shari'a Court in Kano sentenced Abdulaziz Dauda, aka Abdul Inyass, a cleric from the Tijaniyya Muslim sect, to death for blasphemy, along with eight of his followers. He was accused of having stated in early May 2015 that the Senegalese cleric who popularised the Tijaniyya sect throughout West Africa was greater than the prophet Muhammad. Following perfunctory proceedings all nine were found guilty under Sections 110 and 382B of the Shari'a Penal Court law of 2000 and sentenced to death, despite the fact that civil courts are the only ones with the capacity to pass death sentences. In January 2015 a judge in Kano's Upper Shari'a Court upheld the verdict of the lower court and also gave Sheikh Inyass a three years prison term for inciting public disturbance. The judgment was delivered amidst heightened security due to a violent societal reaction, and the sheikh was flown to the national capital Abuja by Department of State Services (DSS) officers soon thereafter.

"State practice … indicates that every regulation of freedom of religion is a reflection, protection, and an advancement of a particular ideology in society, whether religious or non-religious".[14] For example, the re-enactment of Religious Preaching Board Laws by several northern states has also been used for intra-religious restrictions. While these laws were initially promulgated to control the spread of extremist messages, they effectively grant states the ability to curtail arbitrarily the religious practices of nonviolent non-Sunni Muslim groups and other minority faith communities. In particular, the bill proposed in Kaduna state was viewed as a means of restricting the activities of the Shi'a minority following attacks by the military in December 2015, which left around 700

[14] Ahmed Salisu Garba, "Freedom of Religion and its Regulation in Nigeria: Analysis of Preaching Board Laws in Some States of Northern Nigeria". *Law and Religion* 1:4 (2018) 7.

adherents dead and resulted in the ongoing detention of the Shi'a leader and his wife.[15]

Conclusion

While sufficient legal protections exist for FoRB, ensuring its fulfillment will require intentional, long-term initiatives aimed at generating greater recognition of shared values contained within the federal Constitution, a wider acceptance of its supremacy, and efforts to bring laws of individual states into alignment with it. In the short term, however, the federal government must combat impunity by proactively assisting victims and ensuring perpetrators are brought to justice.

[15] Ibid., 1.

PART IV

SPECIFIC HUMAN RIGHTS

17

THE RIGHTS OF WOMEN

Eleni Kasselouri-Hatzivassiliadi

Introduction

Simone de Beauvoir's classic phrase, that "women are made, not born," summarises that gender identity is socially constructed and not biologically determined. Classical Christian theology viewed gender and its roles as an organic part of God's creation, hence endowing them with a universal and eternal character. It was precisely the analysis of gender construction (as it was pioneered by other disciplines, chiefly psychology), which gave leverage to feminist perspectives, and in the process boosted Christian feminism as well.

The term gender refers to the economic, social and cultural attributes and opportunities associated with being male or female. In most societies, being a man or a woman is not simply a matter of different biological and physical characteristics. Men and women face different expectations about how they should dress, behave or work. Relations between men and women, whether in the family, the workplace or the public sphere, also reflect understandings of the talents, characteristics and behaviour appropriate to women and to men. Gender thus differs from sex in that it is social and cultural in nature rather than biological. Gender attributes and characteristics, encompassing, *inter alia*, the roles that men and

women play and the expectations placed upon them, vary widely among societies and change over time. But the fact that gender attributes are socially constructed means that they are also amenable to change in ways that can make a society more just and equitable.[1]

In this frame, the term "women's rights" encompasses many different areas. Women's rights are most often associated with sexual and domestic violence, employment discrimination and reproductive rights. Women's rights also include immigration and refugee matters, child custody, criminal justice, health care, housing, social security and public benefits, civil rights, human rights, sports law, LGBT rights. All these topics became priorities for Christian theology in the framework of ecumenical and inter-religious dialogues.

Biblical and Theological Approach to Women Rights

The presence of women is strong in Old and New Testament. Almost 10% of named characters in the Hebrew Bible are women, and there is also a significant corpus of texts that concern women not identified by name: the daughter of Jephthah in Judges 11:29–40, for example, or the women weavers of 2 Kings 23:7. Many of these women, moreover – named or unnamed – are among the most memorable characters in biblical tradition: Eve, whose creation is described in Genesis 2:21–23 and who is designated the "mother of all the living" in Genesis 3:20; the Genesis matriarchs Sarah, Rebekah, Rachel, and Leah; Moses' sister Miriam, identified as a prophet and as a musician in Exodus 15:20–21; Deborah, likewise identified as a prophet and also a judge in Judges 4:4; and royal women, including King David's wife Bathsheba, Esther, the wife of the Persian King Ahasuerus, and the many wives and concubines of King

[1] Sally B. Purvis, "Gender Construction". In *Dictionary of Feminist Theologies*, edited by Letty Russell and J. Shannon Clarkson. Westminster John Knox Press: London, 1996, 124-125.

Solomon. Also, among Solomon's wives are said to be foreign women, which calls to mind other notable foreign women of biblical tradition, for example, King Ahab's wife Jezebel, who is from the Phoenician city of Sidon, Rahab, who is a Canaanite, and Ruth, who comes from Moab. Particularly striking is the amount of information we can collect about women's roles in family and household contexts. Because the Bible is predominantly concerned with religion, we can also collect from its stories certain information about women's roles in the religious sphere, including roles women assumed as specialised religious functionaries (prophets, magicians, ritual musicians). In general, women's contributions within ancient Israel's male-dominated society are more varied and often more important than a reader might expect. However, women's ability to access positions of leadership and social authority in ancient Israel, especially positions outside the home, was limited.

There are over forty references (not counting repetition in the parallel passages) to women in the Gospels, either in narratives or in the teachings of Jesus. These include allusions to Old Testament events or metaphors (such as Rachel's weeping and the appellation "Daughter of Zion"), parables (the wise and foolish virgins, the woman who used leaven) women as a class (mothers, victims of lust and divorce) or strong characters in the narratives (Mary and Martha, Jesus' mother, Samaritan Woman). The story of the Samaritan woman as a whole illustrates that, although it may seem strange, women appear to be able to be partners in theological discourse, capable of 'leaving everything behind', and of having their share in mission, even on their own initiative as their response to Jesus' self-revelation that he is the Messiah. The story as a whole also shows that Jesus himself becomes aware that women may be sowers of the seed like he, and that the disciples need not be afraid, or need not stop them, but may rejoice with them, reaping the harvest (John 4:27-38).

All four Gospels open their accounts of the day of resurrection with the early visit of women to the tomb (Matt 28:1-8; Mark 16:1-8; Luke 24:1-8; John 20:1-10). John has a further section about Mary Magdalene (John 20:11-18). Mark 16:9-11 also mentions Mary Magdalene; some interpreters emphasised that the first proclamation of the resurrection of Christ was made to women. Mary Evans notes that the women not only were "witnesses to the facts and receivers of the message" but also were commissioned to declare the message: "they were the first proclaimers of it by the direct command of the angels and of Christ himself".[2]

Moving to the Pauline epistles, it is not surprising that St. Paul's references about women and the church introduce issues and approaches not found in the Gospel accounts of Jesus. Galatians 3:28 stands, in the opinion of many, as the most significant single statement by Paul on women. The condition for accession into the community is no longer circumcision but baptism, which simultaneously leads to the abolition of all conventional discriminations among people. Due to the particularity of its structure, form and content the verse received various and, many times, contradictory interpretations. On one hand, it was characterized as the *magna carta* of humanity and especially as "the proclamation for women's liberation", while, on the other hand, as dealing with wo/man's *coram Deo* and having no reference to the social reality.[3]

This baptismal formula belonged to the first Christian churches of Hellenic background. These Christian communities included women and men, slaves or former slaves, and freed men and women from Greek and Jewish backgrounds. This quasi-baptismal creed assured them that all the hierarchical structures between these different social statuses had been dissolved in Christ, that they all shared a new oneness and unity in Christ.

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[2] Mary J. Evans, *Woman in the Bible*. Downers Grove: InterVarsity, 1983, 54.

[3] Eleni Kasselouri-Hatzivassiliadi, "Community of Women and Men: Galatians 3:23-29". In *Women's Ways of Being Church: A Bible Guide*, edited by J. Shannon Clarkson and Letty M. Russell. Geneva: W.C.C. Publications, 2004, 33-37.

The gender part of this formula was probably linked from its beginning with celibacy. Women became equal with men by dissolving their traditional relations with men as wives, thereby they were also freed to teach and preach in local assemblies. They were free to work as travelling evangelists.

St. Paul's letters reveal indeed that women were active with him in mission. Further, in the opinion of an increasing number of scholars, two of the most important and highest roles are ascribed to women: *deacon* (Phoebe) and *apostle* (Junia). The next word used to describe Phoebe is *prostates*, a word that belongs to a word group that has a strong connotation of authority. As feminist scholars claim, sometimes Romans 16:1-3 accepted very unfair and androcentric interpretations.[4] Sometimes Romans 16:1-3 accepted very unfair and androcentric interpretations. In this passage Phoebe is called the *diakonos* and *prostates* of the church in Caechreae, the seaport of Corinth. Exegetes attempt to downplay the importance of both titles here because they are used with reference to a woman. Whenever Paul calls himself, Appollos, Timothy, or Tychicos *diakonos*, scholars translate the term as "deacon". Yet when the expression refers as here to a woman, exegetes render it more as a

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[4] Ivoni Richter Reimer, *Women in the Acts of the Apostles: A Feminist Liberation Perspective*. Minneapolis: Fortress Press, 1995; Elisabeth Schussler-Fiorenza, "Missionaries, Apostles, Coworkers: Romans 16 and the Reconstruction of Women's Early Christian History". *Word and World: Theology for Christian Ministry* 6 (1986) 420-433; Caroline F. Whelan, "Amica Pauli: The Role of Phoebe in the Early Church". *JSNT* 49 (1993) 67-85; Bernadette J. Brooten, "Junia ... Outstanding among the Apostles (Rom 16, 7)". In *Women Priests: A Catholic Commentary on the Vatican Declaration*, edited by Leonard and Arlene Swidler. New York: Paulist Press, 1977, 141-144; Mary Rose D'Angelo. "Women Partners in the New Testament". *Journal of Feminist Studies in Religion* 6:1 (1990) 65-86; Elizabeth A. Castelli. "Romans". In *Searching the Scriptures*, edited by Elisabeth Schüssler-Fiorenza, New York: Crossroad Press, 1994, 272-300.

"servant" or "helper". But as we can understand from 1 Corinthians 3:5-9, Paul uses *diakonos* parallel to *synergos* and characterises with these titles Apollos and himself as missionaries with equal standing who have contributed to the upbuilding of the community in different ways. Since Phoebe is named *diakonos* of the church at Cenchreae, she receives this title because her service and office were important in the community.

Paul accepted the activity of women in local churches and travelling as evangelists, as is evident from his references in his epistles. But there are cases in Paul which seems to suggest either the subordination of women (I Cor 14:34ff.; Eph 5:22; Col 3:18; etc.), or unrestricted obedience to civil authorities (Rom 13), and acceptance of slavery (I Cor 7:21; Phlm). It is commonly believed that he reproduces the well-known obsolete *Haustafeln* or household codes (Col 3:18ff. and parallels). It was mainly these cases that gave rise to the criticism that Paul (or the Pauline school) did not resist with all his power the socio-political *status quo* of his time, and that he and his school, and Christianity thereafter, tolerated subordination of women, both in society and within the Church structure.

In the generation following Paul, Christian churches that looked to Paul as their founding evangelist became split on these teachings about women's role. Some groups in these second-generation Pauline churches continued and expanded the view that gender hierarchy was overcome through baptism. In Christ there was no more male and female. This also meant that reborn Christians should transcend marital relations and anticipate the Kingdom of God in which there will be no more marrying and giving in marriage. These Pauline Christians wrote texts, such as the "Acts of Paul and Thecla," which celebrates the story of a woman converted by Paul who rejects her fiancé, adopts men's clothing, and travels as an evangelist.

Another group of Pauline Christians rejected this new freedom of women to refrain from marriage and to engage in ministry. It is their voice that is reflected in the texts of I Timothy 2:11-15:

> I permit no woman to teach or to have authority over men; she is to keep silent. For Adam was formed first, then Eve, and Adam was not deceived, but the woman was deceived and became a transgressor. Yet women shall be saved through bearing children, if she continues in faith and love and holiness with modesty.

This text was later to be received by the historical Church as the normative one, forbidding women public ministry and also demanding that they marry and bear children. But a celibate option for women also continued and was institutionalised in women's monachism. A critical moment for gender issues was the transition from house churches to the gathering of congregations in public buildings or basilicas, through which the *oikos* lost its public function. On being moved out of homes, worship had to adapt to ideas and behaviours expected by society, and additionally to adapt all the rules of the public sphere. On the other hand, church officers sought to avoid everything possible that causes offence in the society. This included especially offences against the well-established cultural rules on gender roles. For the sake of expanding their mission local churches decided to adapt to the surrounding culture and patriarchal gender stereotypes.

There was probably no moment in early Christianity where women were totally included *as equals* with men. Christianity was born and developed in the context of patriarchal social structures in both the Jewish and Hellenistic worlds. But there were radical ideas floating around in early Christianity that suggested that gender hierarchy had been dissolved through baptism into Christ for a new humanity beyond gender. Christians understood themselves as the new family and expresses this self-understanding institutionally in the house church. It was the religious ethos of equality that was transferred to and came in conflict with the patriarchal ethos of the household. The first Christian missionary movement provided an alternative vision to the dominant society and

religion, without eventually avoiding discriminations and inequalities of the social context and ethos to penetrate the early Christian communities.

Feminist theologians have challenged the role of women in the Bible and additionally the view that science can or indeed must be a neutral and presupposition-free enterprise.[5] For example, they have indicated with regard to Biblical studies, that the exegete's race, gender, and social class, are no less influential in the construction of his or her agenda, methodology, and exegesis than personal interests and scholarly formation have been. Additionally, believing that the spiritual text, though inspired, have a patriarchal basis, women have sought to do a rereading of them from their situation of oppression, which has given rise to new interpretations of these biblical documents. In the process, women sometimes refer to their situation as being doubly or triply oppressed (because of their economic condition, because of their culture, and because of their gender), and they give expression to a hope and vision of a greater equality with men and greater participation in church and society.

International Legal Tools

Although the phrase "human rights" is sometimes used loosely to express general norms of justice and human dignity, the term refers equally to system of rights guaranteed under the law. The Universal Declaration of Humans Rights (UDHR) has been adopted by the General Assembly of United Nations. Thus, it is more representative of the aspirations and commitments of diverse human communities than are particular religious documents.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General

[5] Elisabeth Schussler-Fiorenza, *Discipleship of Equals: A Critical Feminist Ekklesia-logy of Liberation*. London: SCM Press, 1993.

Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. CEDAW defines discrimination against women as:

> any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Without education, awareness of rights and decision-making power, women are often unable to claim their rights, obtain legal aid or go to court. Some practical approaches include:

- abolishing user fees for healthcare, which has been shown to increase women's and girls' access to services, including for reproductive health;
- using stipends and cash transfers to encourage girls to go to school, delay marriage and continue their education for the critical secondary years;
- putting women on the front line of service delivery to make public services more accessible;
- and amplifying women's voices in decision-making, from the household up to local and national levels, to ensure that policies reflect the realities of women's lives.

CEDAW provides the basis for realising equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life – including the right to vote and to stand for

election – as well as education, health and employment. It is significant for every country to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.

CEDAW is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to acquire, change or retain their nationality and the nationality of their children. All countries agreed to take appropriate measures against all forms of traffic in women and exploitation of women.

Countries that have ratified or acceded to CEDAW are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

Additionally, the 1993 World Conference on Human Rights in Vienna strengthened international commitment to the fundamental principle that women's rights are human rights. The International Conference on Population and Development (ICPD) in Cairo in 1994 prompted the international community to focus on the role of women's human rights in the context of population policy. The Program of Action which emerged from the ICPD emphasises the importance of women's human rights in both population and development objectives. It reiterates that a better quality of life for individual human beings must be the focus of government policies, and that "[t]he human rights of women ... are an inalienable, integral and indivisible part of universal human rights". In particular, in a section titled *Reproductive rights and Reproductive Health*, the Program makes the important statement that "reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other relevant United Nations consensus documents" and reiterates the principle that

there is a "basic right of all couples and individuals to decide freely and responsibly the number, spacing, and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health". The Program goes on to state that the right "includes the right of all to make decisions concerning reproduction free of discrimination, coercion, and violence".

These statements in the Program of Action reflect a growing acknowledgement by the international community that the right to reproductive health care, in a social and health care system that ensures informed and voluntary reproductive choice, is within the scope of existing international human rights treaties and conventions. Among these are the United Nations Charter, the UDHR, the International Covenant on Economic, Social and Cultural Rights and the CEDAW. Collectively, these international legal instruments guarantee individuals a right to health care, the benefits of scientific progress, privacy and security of the person gender equality, non-discrimination, and freedom from government interference in marriage and family life.

European Legal Framework

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) prohibits discrimination on any grounds, including sex, in the enjoyment of rights contained in the ECHR (Article 14). Since 1998 individuals can bring complaints to the European Court of Human Rights based on allegations of violations of the ECHR. In 2011 the Council of Europe adopted a new Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

Fifteen (15) EU Directives have been adopted between 1975 and 2010. Among other things, this wide-ranging body of legislation:

- ensures the equal treatment of men and women at work;

- prohibits discrimination in social security schemes;
- sets out minimum requirements on parental leave;
- provides protection to pregnant workers and recent mothers;
- sets out rules on access to employment, working conditions, remuneration and legal rights for the self-employed.

EU Directives are legally binding for Member States and must be incorporated into their national legislation.[6] This allows citizens who feel that they have suffered discrimination to take their cases to national courts. All EU Member States have established national equality bodies to monitor the application of gender equality laws. They meet regularly with the European Commission to exchange information, ideas and best practices. National Equality Bodies can help citizens in legal actions and provide advice on the availability of legal remedies. The EU Member States are committed to gender equality through the European Pact for Gender Equality, originally adopted in 2006.

In March 2011, a new Pact for the period 2011-2020 was adopted. It urges the EU and its Member States to work towards achieving equality, ensure equal pay for equal work and promote the equal participation of women in decision-making. The Pact also calls for an increase in affordable and high-quality childcare, the promotion of flexible working arrangements, action to reduce violence against women and increased protection for victims of violence.

EU have adopted the concept of gender mainstreaming, which is a strategy for integrating gender concerns in the analysis, formulation and monitoring of policies, program and projects. The purpose of gender mainstreaming is to promote gender equality and the empowerment of women in population and development activities. This requires

[6] See "EU regulations". https://eige.europa.eu/gender-based-violence/regulatory-and-legal-framework/eu-regulations [accessed 20 Nov. 2018].

addressing both the condition, as well as the position, of women and men in society. Gender mainstreaming therefore aims to strengthen the legitimacy of gender equality values by addressing known gender disparities and gaps in such areas as the division of labour between men and women; access to and control over resources; access to services, information and opportunities; and distribution of power and decision-making.

Good Practices in the Churches

Since its birth in 1948 the World Council of Churches (WCC) has promoted women's rights in close collaboration with religious and civil-society partners around the world. In 1953 the program of Women in Church and Society began with the proclamation that the renewal of dignified life after World War II was only possible if women were an active part of every initiative of justice and peace by the churches in society. This initiative led by Kathleen Bliss (Church of England) and others, who they were inspired by leading Christian women, including Eleanor Roosevelt, an early advocate of ecumenical international initiatives and chair of the United Nations Human Rights Commission which composed the UDHR. The WCC in collaboration with local churches formulated of key insights about the patriarchal and androcentric character of Christian traditions and the need of a more inclusive theology. At the 9th WCC General Assembly a march against gender-based violence was organised. WCC persistently promotes inclusion of women and gender-justice and equality in the churches and in society. WCC Ecumenical Decade of Churches in Solidarity with Women (1988-1998) built on the UN Decade for Women (1976-1985). Inaugurated during the Easter season the opening refrain was, "Who will roll the stone away?". The decade was in some measure, a response to the significant

role issues of women and religion played at the end of the decade for women conference sponsored by the UN in Nairobi in 1985.

A major post decade initiative "On Being Church: women's voices and visions" sustained the solidarity, noting that mid-decade teams heard not only stories of violence and exclusion but also stories of women standing in solidarity with each other, of their commitment to their churches and their efforts to develop their own ways of being church together". The study invited women to: a) describe women's participation in the life of their church, b) express their vision and hope for the church as a community of solidarity and justice, c) express their faith and struggle in secular groups.

The WCC Decade for Overcoming Violence 2000-2010 worked with churches, women's networks, civil society, raising awareness and offering on-the-ground training on gender analysis, gender-based violence awareness, women's rights and HIV-competence in health and pastoral care.

"Thursdays in Black" campaign, through the simple gesture of wearing black on Thursdays, promotes an end to violence against women and girls. It is a united global expression of the desire for safe communities where we can all walk safely without fear of being raped, shot at, beaten up, verbally abused and discriminated against due to our gender or sexual orientation. At its 10th Assembly in 2013, the WCC revived this campaign, born during the Ecumenical Decade of Churches in Solidarity with Women (1988-1998), partnering with the Christian Aids Bureau for Southern Africa, Diakonia Council of Churches, Northern Territory Youth Affairs Network, Victoria University Students' Association, Uniting Church in Sweden and Church of Sweden, among others.

The current WCC program "Women in Church and Society" calls the Churches to address stereotypes and prejudice in their midst. The program invites the Churches to address sexism in their structures and life. WCC,

after its 10th General Assembly, established a gender advisory group, which in collaboration with WCC General Secretary, plan strategies and promote equality both to churches and within the structure of WCC.

Proposals for the Action within the Churches to Strengthen Women's Rights

Although an enormous has been already done, Leymah Gbowee speaking at the WCC 10th Assembly, 2013 proposed that Churches in collaboration with international fora and organisations should:

- promote the building of a community of women and men for a culture of justice and peace with no violence against women in church and society through the process of a gender justice policy;
- mobilize a church women's movement for the advocacy of women's dignity and human rights with states locally and through the UN Commission on the Status of Women;
- deliver grassroots training related to the health and well-being of women;
- increase partnerships for gender justice and equality in programs addressing human sexuality, HIV and AIDS, migration and trafficking of women;
- promote concepts of positive masculinity which support gender justice and equality through gender training and awareness raising in collaboration with men's gender networks and increasing women's access to services which provide appropriate help in cases of sexual and gender-based violence.

Questions for the Debate on Women's Rights

At the beginning of the training session, you may ask yourself which inferior or discriminated groups are there in your community or state. Are there stigmas that are put on them? Which fears and prejudices against them are common? A crucial element bearing on the problem of women's participation in Church life is that of Tradition. What does "Tradition" really mean to you and your church and how is its preservation to be understood? What would a fresh hermeneutical reading of the tradition look like? Are we not led to conclude, then, as feminist hermeneutics systematically remind us, that at least in regards to the issue of women's presence in the Church, we are faced with two distinct traditions within the rubric of our singular Tradition? One liberating and reforming tradition, where the "male-female" distinction is obsolete, and another one, which perpetuates stereotypes, leads to exclusionism, and brings discredit to the very nature of the Church? Isn't it time for us theologians to begin acting eclectically like bees, moving from bloom to bloom with a view to picking up only what is useful to us and our current historical, social, political and cultural context? Why are we so unwilling to apply to women's liturgical life in the Church, the same eschatological orientation that's been guiding us in the other aspects of our Christian life?

Resource material includes material about international and European

legislation for women's rights[7] and material about women's rights, theology and churches[8].

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[7] "Beijing and its Follow-up". http://www.un.org/womenwatch/daw/beijing/; "Gender equality". https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality_en; "Women's Rights are Human Rights". https://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf; [all accessed 20 November 2018]; Catherine Hoskyns, *Integrating Gender: Women, Law and Politics in the European Union*. London: Verso, 1996.

[8] Constance Parvey, *The Community of Women and Men in the Church. The Sheffield Report 1981.* Fortress Press, 1983; J. Shannon Clarkson, and Letty M. Russel (eds.), *Women's Ways of Being Church: A Bible Study Guide.* Geneva: WCC Publications, 1999; Fitzgerald Kyriaki Karidoyannes (ed.), *Orthodox Women Speak: Discerning the 'Signs of the Times'.* Geneva: WCC Publications, 1999; *Living Letters: Report of the team Visits to the Churches on the occasion of the Ecumenical Decade of the Churches in Solidarity with Women*. Geneva: WCC Publications, 1998; "New Ways of Being Church". Report of the Asian Regional Meeting coorganised by WCC and CCA. *In God's Image* 23:1 (March 2004); "On Being Church: Women's Voices and Visions". *The Ecumenical Review* 53:1 (January 2001); Gillian Patterson, *Still Flowing: Women, God and Church*. Geneva: WCC Publications, 1999; Iabel Apawo Phiri and Sarojini Nadar (eds.), *On being Church: African Women's Voices and Visions.* Geneva: WCC, 2005. Elisabeth Raiser and Barbara Robra (eds.), *With love and with Passion: Women's life and Work in the Worldwide Church*. Geneva: WCC Publications, 2001; Letty M. Russell, Aruna Gnanadason and J. Shannon Clarkson (eds.), *Women's Voices and Visions of the Church: Reflections from North America*. Geneva: WCC, 2005; Liveris Leoni, *Ancient Taboos and Gender Prejudice*. Ashgate, 2006; Christina Breaban, Sophie Deicha and Eleni Kasselouri-Hatzivassiliadi, *Women's Voices and Visions of the Church: Reflections of Orthodox Women.* Geneva: WCC, 2006; "Women and Mission". *International Review of Mission* 93:368 (January 2004); *Yours Story is My Story, Your Story is Our Story: Report of the Decade Festival, Harare*. Geneva: WCC/JPC Team Publication, 1999; Eleni Kasselouri-Hatzivassiliadi, Fulata Moyo and Aikaterini Pekridou, *Many Women were also there … the participation of Orthodox women in the Ecumenical Movement.* WCC and Volos Academy Publications, 2010; Natalie Maxson, *Journey for Justice: The Story of Women in the WCC*. Geneva: WCC, 2015.

18

THE RIGHTS OF PRISONERS

Part I – Bill J.W. Cave; Part II – Alexander Funsch

This chapter is in two sections. The first deals with the international human rights standards for people in prison, the second deals with the work of prison chaplaincy, with Germany as an example.

Part I: The Rights of Prisoners

In January 2019, there were over 1.5 million people in the prisons, police stations, mental health institutions and immigration centres of Europe.[1] Although most common cause of imprisonment is criminal behaviour, mental illness, infectious disease or unauthorised migration frequently also lead to detention.

Many authors have written about prison life. While classic writers like Dostoevsky (*House of the Dead*), Chekov (*Sakhalin Island)*, or Victor

[1] Europe means the 47 Council of Europe member states. Statistics are taken from the *European Prison Observatory.* http://www.prisonobservatory.org and the *World Prison Brief.* http://www.prisonstudies.org [accessed 15 Jan. 2019]. The total was 1,580,000. However, two countries were responsible for 50% of the total: Turkey (260,000) and the Russian Federation, (568,000).

Frankl (*Man's Search for Meaning*) have written powerfully about incarceration, the words of others may be just as moving. These words, by an anonymous UK prisoner, express his inner turmoil. The writer subsequently ended his own life.

When all is still
and the door's shut tight
And not a sound is heard
When you're all alone
to face an endless night
That's when you do your bird[2]

That's when the fears
bring desperate tears
To fall unseen to the floor
You lower your guard
And the brave façade
crumbles behind the door

It's not weak to show emotion
I know that for a fact
But in places like this
where you're supposed to be hard
It seems an unnatural act.

Yes-the days are the time
for the tough guy act,
But on this I'll stake my word,
It's late at night
when the eyes can't see.
That's when you do your bird.

[2] *Doing your bird* is English prison slang for a prison sentence.

Twenty-first century prisons are no longer private places. The internet affords a previously unimagined level of access. But every posting has a purpose. Official postings like YouTube clips of *Bastoy*[3] or *Halden*[4] open prisons in Norway, newly-built Beveren Prison in Belgium[5] or an introduction to the Dutch prison system,[6] are intended to educate and reassure. Unofficial postings are probably intended to threaten and disturb. Highlighting specific examples is invidious, as few countries avoid under-funding, over-crowding, drug-taking, radicalisation or violence somewhere in their prison estate. Entering *YouTube + prison + name of country* into your favourite search engine will produce the information you need.

Those concerned for international statistics should look to *World Prison Brief Website*[7]*;* providing worldwide prison statistics, and details of national authorities, or the *SPACE Website*[8]*;* providing data on imprisonment and penal institutions and non-custodial sanctions and measures within the member states of the Council of Europe. As well as revealing the numbers of those in prison, these websites also measure imprisonment rates, the number of prisoners per 100,000 of population; an indication of the extent of imprisonment in particular countries.

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[3] *Bastøy Prison – Norway's Revolutionary Humane Prison*. https://www.youtube.com/watch?v=ZCTXFM_raeA [accessed 15 June 2016].

[4] *Luxury Prison in Norway – Serving Time with Amenities*. https://www.youtube.com/watch?v=TgujwijPwxo [accessed 15 June 2016].

[5] *Volunteers test new Belgian prison before it opens.* https://www.youtube.com/watch?v=mXejxvIIa4A [accessed 15 June 2016].

[6] *Dutch Prison System: How it works.* https://www.youtube.com/watch?v=XOIKtQlYcH8 [accessed 15 June 2016].

[7] *World Prison Brief data.* http://www.prisonstudies.org/world-prison-brief-data [accessed 15 Jan. 2019].

[8] SPACE (*Statistiques Pénales Annuelles du Conseil de l'Europe)* is based at the University of Lausanne. http://wp.unil.ch/space/space-i/prisons-in-europe-2005-2015/ [accessed 15 June 2016].

Those concerned for prison conditions may also look to the Committee for the Prevention of Torture[9] (CPT). The CPT is the monitoring body for places of detention in Council of Europe member states. The CPT website and its reports give an up-to-date and impartial view of the treatment of prisoners by the member states of the Council of Europe.

Although only those on whom the prison door is closed at night really understand the reality of prison, families nonetheless also serve *the second sentence* of separation from those they love.[10]

Furthermore, victims of the estimated 30 million crimes annually committed in the EU, need to be remembered with *recognition, respect and dignity.*[11] Prison staff may also need support and pastoral care.

Prisons and the Bible

The Old and New Testaments contain more than 100 references to prisoners and/or prisons. Joseph, (Genesis 39-41), Samson, (Judges 16), Jehoiachin (2 Kings 25:27) are the best-known stories of the Old Testament, supplemented by the Book of Psalms (68:6, 69:33, 102:20, 107:10, 142:7, 146:7). Not Surprisingly, the stories of Daniel 1-6 are particularly popular in prison chapels, as prisoners, not their captors, come out on top.

In the New Testament, John the Baptist is imprisoned and beheaded (Matthew 14:3f); in Acts the Apostles and first disciples seem often to be in prison; Peter and John (5:18f), Peter (Acts 12:5), Paul and Silas (Acts

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[9] *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).* https://www.coe.int/en/web/cpt/home [accessed 15 Jan. 2019].

[10] *Prison UK: An Insider's View.* http://prisonuk.blogspot.nl/2014/07/serving-second-sentence.html [accessed 15 June 2016].

[11] *Building an European Area of Justice.* http://ec.europa.eu/justice/criminal/victims/index_en.htm [accessed 15 June 2016].

16:23). Paul was arrested (Acts 21:30) and taken to Rome, where he wrote the *prison epistles* (Ephesians, Philippians, Colossians, and Philemon). Jesus himself was arrested and imprisoned (Matthew 26:47f and parallels)

Bible passages which are important for humanity, decency and respect, and religious freedom include:

"Everyone is subject to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God" (Rom 13:1). Every European state has its own criminal justice and penal systems. Membership of the Council of Europe and the European Union also involves a commitment to wider international and European standards for the treatment of prisoners. The starting point for prison ministry is that legitimately constituted authority is part of God's will for humankind.

The parable of the sheep and the goats in St Matthew's Gospel has been described as *the Magna Carta of prison ministry*.[12] "I was in prison and you came to me". (Matthew 25:36). Jesus tells his disciples to recognise him not only in prisoners but in all who are marginalised, strangers, those who are hungry, naked, or ill as well as in prison. Those in custody should be treated properly not just because it is a principle of international law or an expectation of the Council of Europe, but because he/she should be regarded as the person of Christ. The parable has inspired many sermons and continues to inspire many lives. Karl Rahner in "The Prison Pastorate"[13] reminds prison chaplains not only to find Christ in prisoners, but also to remember their own brokenness and the brokenness of the world.

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[12] Richard Atherton, *Summons to Serve: Christian Call to Prison Ministry.* London: Geoffrey Chapman, 1987.

[13] Karl Rahner, *Mission and Grace: Essays in Pastoral Theology*, Volume 3. London and Melbourne: Sheed and Ward, 1966, 74-97. The text was supplied by the Karl Rahner Archive (since mid-Feb. 2008) in Munich. http://www.strassen exerzitien.de/?page_id=959 [accessed 15 June 2016].

"My Father's house has many rooms" (John 14: 2). Jesus' words in John's record of the Last Supper show the differences between Christian faith in a multi-faith prison world and other church settings. Prisons, like most chaplaincy environments, are a part of the public space in which everyone is according to the European Convention the Protection of Human Rights and Fundamental Freedoms (ECHR) entitled to freedom of religion (Article 9) and freedom of expression (Article 10) provided that they do not infringe the rights of others. Although the European states vary in their attitudes to religious practice and diversity in public places, they have a common interest in social cohesion. Religious ministers in prisons have a special opportunity to promote social cohesion by the way in which they balance the interests of their own faith with the needs of others. Prison chaplaincies are increasingly organised on a multi-faith basis; in western Europe the Netherlands and the United Kingdom are the most developed; in eastern Europe many the orthodox churches are making progress with prison chaplaincy arrangements, also realising the need to work with others in their care for those of minority faith traditions.

International Law

Prisoners in Bible stories were rarely cared for with humanity, decency, and respect, or allowed freedom of religion and conscience. In the twenty-first century membership of the Council of Europe and the European Union now also requires national commitment to international and European standards.

International law for the treatment of prisoners is derived from the Universal Declaration of Human Rights (UDHR),[14] the International

[14] *Universal Declaration of Human Rights.* http://www.un.org/en/documents/udhr/ [accessed 15 June 2016].

Covenant on Civil and Political Rights (ICCPR).[15] Specific prison standards have recently been re-stated in the Mandela Rules (MR), 2015.[16] The starting point is the right to be treated with humanity, decency and respect.

> All human beings are born free and equal in dignity and rights. (UDHR, Article 1)
>
> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. (ICCPR, Article 7)
>
> All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. (MR, Rule 1)

Recognising its essential contribution to human dignity, prisoners' freedom of religion or belief is also specifically protected.

> Everyone has the right to freedom of thought, conscience and religion. (UDHR, Article 18)
>
> Everyone shall have the right to freedom of thought, conscience and religion. (ICCPR, Article 18(1))
>
> The religious beliefs and moral precepts of prisoners shall be respected. (MR, Rule 2)
>
> So far as is practicable, every prisoner shall be allowed to satisfy the needs of his or her religious life ... (MR, Rule 66)

However, unless international standards are specifically incorporated into national legal system, they create moral responsibilities for UN member

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[15] *International Covenant on Civil and Political Rights.* http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx [accessed 15 June 2016].

[16] *Mandela Rules.* https://www.unodc.org/unodc/en/press/releases/2015/May/mandela-rules-passed--standards-on-the-treatment-of-prisoners-enhanced-for-the-21st-century.html [accessed 15 June 2016].

states, not individual rights. The cost of non-compliance is embarrassment for governments, rather than compensation for individuals.

The starting point for European protections is the ECHR[17], supplemented by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 1987,[18] and the European Prison Rules (EPR), 2006.[19]

For European prisoners the fundamental protection is the ECHR, which is equally applicable to prisoners *Greek Case 1967*.[20] Article 3 is a specific, and unqualified, protection against ill treatment: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment" (ECHR, Article 3). Although freedom of religion or belief are ensured – "Everyone has the right to freedom of thought, conscience and religion" – the right can be qualified provided that "limitations are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others" (Article 9(2)).

Although landmark cases such as *Jakóbski v. Poland*[21] *– (2010) 30 BHRC 417* and *Vartic v. Romania*[22] support the principle of prisoner's

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[17] *European Convention for the Protection of Human Rights and Fundamental Freedoms.* http://www.echr.coe.int/Documents/Convention_ENG.pdf [accessed 15 June 2016].

[18] *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*. http://www.coe.int/en/web/cpt/home [accessed 15 June 2016].

[19] *Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules.* https://wcd.coe.int/ViewDoc.jsp?id=955747 [accessed 15 June 2016].

[20] *The Greek Case* (Application No. 3321/67 et al. 15 Apr. 1970).

[21] *Jakóbski v. Poland* (Application No. 18429/06 7 Dec. 2010).

[22] *Vartic v. Romania* (Application No. 12152/05 10 July 2012) and *Vartic v. Romania* (no. 2) (Application No. 14150/08 17 Dec. 2013).

religious rights, individual states vary in the ways in which ECHR judgments relate to domestic legal systems. States can also claim a "margin of appreciation" in their implementation of Convention rights.

In 1987, The Council of Europe founded the CPT[23] with the power to make unannounced inspections to places of detention. The CPT advises the Strasbourg Court about prison conditions including the practice of religion. Unfavourable reports may cause diplomatic embarrassment. Details of the CPT visits will be found on their website.[24]

The European Prison Rules (EPR), 2006, are recommendations from the Council of Europe, intended to "stimulate prison reform," to "protect human dignity, to encourage meaningful activities to prepare people for release" and to harmonise standards across Europe.[25]

> All persons deprived of their liberty shall be treated with respect for their human rights. (EPR, Rule 1)
>
> Prisoners' freedom of thought, conscience and religion shall be respected. The prison regime shall be organised so far as is practicable to allow prisoners to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs. (EPR, Rule 29)

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[23] *Convention for the Prevention of Torture and Inhuman or Degrading Treatment.* https://rm.coe.int/16806dbaa3 [accessed 15 June 2016].

[24] *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*. http://www.coe.int/en/web/cpt/about-the-cpt [accessed 15 June 2016].

[25] *Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules.* https://wcd.coe.int/ViewDoc.jsp?id=955747 [accessed 15 June 2016].

European standards through the CPT and EPR, like international law, are designed to be effective through encouragement rather than by enforcement. Although every European state is committed to the principles of international and European law, implementation varies from country to country. The *European Prison Observatory*[26] is an EU-funded project to monitor prison conditions in France, United Kingdom, Greece, Italy, Latvia, Poland, Portugal, Spain with an emphasis on the extent of EPR compliance.

The essential difference is that European human rights standards are more enforceable and contain an individual right of redress. Through the Council of Europe, European states are accountable to each other for prison standards and other forms of human rights implementation.

This section began with the words of a prisoner for whom the experience of prison was intolerable. These words were given to the writer in appreciation of the chapel at the prison where he was detained. He has since been released.

In a world characterised by divisions and conflicts, prison represents the archetype of social breakdown and exclusion. Those who enter are labelled as deviants, as generically 'bad' and 'dangerous'. In less fortunate times they become powerless pawns in an unscrupulous political game, sometimes becoming casualties of re-directed hatred. Yet when secular society would abandon and condemn them to a life of misunderstanding, many religions are prepared to see them as individuals. Within a prison's walls there are those who work tirelessly to rebuild lives; places where the darkness of animosity no longer prevails.

This is a part of prison life that many rely upon, one of song and prayer and quiet contemplation. If a prisoner's cell can be regarded as their temporary home, the chapel can act as their sanctuary. In some institutions it is the only place to find peace and compassion. It can be a beacon of

[26] *European Prison Observatory.* http://www.prisonobservatory.org/ [accessed 15 June 2016].

light; an oasis in a desert of despair, a camp fire in the cold wilderness of condemnation.[27]

Part II: Prison Chaplaincy with Germany as an Example

Prison chaplaincy is a firm component of the execution of a prison sentence. As an example, in Germany about 600 prison chaplains work in prisons every day as members of the pastoral ministry team. Yet their activity and work has so far attracted little academic interest. That is why, in spring 2012, the author and his doctoral supervisor, Prof. Dr Kinzig (Institute for Criminology of Eberhard-Karls-Universität Tübingen), conducted an empirical study with the intention of finding out more about the goals and priorities of prison chaplains, as well as their relations to the prisoners and the prison staff.[28] The study also aimed to examine the chaplains' understanding of a prison sentence and its practical execution.[29]

The subject of this part of the chapter is, first, the church employees and their motivation for working as prison chaplains, then their goals and the practical activities of prison chaplaincy. The article ends with the chaplains' assessment of the status and situation of prison chaplaincy and their understanding of prison sentences and imprisonment.

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[27] Written by [S.] Autumn 2012. [Unknown author: Editor Note].

[28] The results, of which a small extract is presented here, were published 2015. See Alexander Funsch *Seelsorge im Strafvollzug: Eine dogmatisch-empirische Untersuchung zu den rechtlichen Grundlagen und der praktischen Tätigkeit der Gefängnisseelsorge*. Baden-Baden: Nomos Verlagsgesellschaft, 2015.

[29] The Germany-wide survey took place on the basis of a questionnaire with 60 questions. It was sent out by post with about 23% of chaplains responding (n=139) after they were contacted through their respective prisons.

The Church Employees

The survey, in which an equal number of Catholic and Protestant chaplains took part, was first concerned with personal details about the church employees.[30] Generally speaking, the two denominations are equally involved in prison chaplaincy. The church employees are mostly full-time pastors, very frequently male (86%) and aged between 50 and 60. About 40% of those surveyed had been doing this work for more than ten years. Only 12% of prison chaplain staff are still civil servants. Most of them are paid by their church (62%). About 10% of the church employees participating in the survey stated that there was state refinancing. In just under one third of cases the chaplains are exclusively financed by the state. Only 5% of the prison chaplains work in an honorary capacity.

With respect to the prisons approached for this survey, about half of them are served by full-time chaplains and about 20% by part-timers. Then there are mixed forms. Purely voluntary service is very rare. Generally, two or three chaplains (of different denominations) work in one prison. While the number of other prison staff is generally dependent on the number of prisoners, that is not the case everywhere, according to the survey. In other words: a large number of prisoners does not automatically lead to more chaplains.

The number of prisoners per chaplain consequently differs. However, most respondents have no more than 100 prisoners in their care. They devote small shares of their working time to the prison staff (12%), the relatives of the prisoners (7%), and to released prisoners (4%). The chaplains attend to all the prisoners regardless of their own religion or

[30] For the situation of Muslim prisoners, see the completed research project "Muslime im Justizvollzug" and the current research project "Muslime im Jugendstrafvollzug – Chancen und Herausforderungen für eine gelingende Integration" conducted by the Institute for Criminology in Tübingen (IFK).

denomination. Their clientele mostly consists of 25% Catholics and Protestants, and approximately 15% Muslims. The rest are prisoners with no religious affiliation.

The Motivation of Prison Chaplains

There are many reasons why chaplains work in prisons. First, there is the early Christian and biblical-and-church mandate to give pastoral care (Matthew 25:31-36; Hebrew 13:3). Chaplains would like to integrate spiritual elements in the prison and continue the age-old church tradition of visiting prisoners. Notwithstanding there were also chaplains who did not give any particular reasons. They had taken on this position by accident, or working in the prison was simply part of the job description of their ministerial post.

The prison chaplains, as Christians, want to help give prisoners a lobby and to show an interest in persons on the margins of society. Some of them have the additional motivation for working in a prison: they find it a difficult, challenging, and also varied job, with constant contact to foreign languages and cultures. Others again are curious and find it challenging to work in such a closed world with (frequently) difficult individuals and such varied life stories. They would like to meet people who have manifested the dark sides of themselves that chaplains also have and who come from "a really human society". Further, the chaplains are motivated by the special intensity of pastoral care and encounter in the prisons. Finally, other reasons for choosing this type of work are the general conditions, above all the opportunity for independence and personal responsibility, as well as the relatively small amount of administration.

The Goals of Prison Chaplaincy

When asked about the goals of their work the chaplains again mention the church's biblical mandate to minister to prisoners, just as they had when asked about their motivation for this vocation. Something even more important in practice is, however, counselling prisoners on questions of faith and life, questions of guilt and forgiveness, accompanying them in working through what they have done and also in assuming responsibility for it. Of similar importance is the chaplains' desire to help prisoners to cope with prison life, as well as their intention to improve the atmosphere there.

Other important goals are proclaiming the Christian faith, being present with the prisoners through the chaplaincy work, and re-socialising them, i.e., empowering them to lead a life without crime in future. However, these goals are not top of the list. Rated almost equally was the further aim of using their vocation to do things that the prison is not in a position to do. The chaplains affirmed this goal – described as a "complementary function" – much more clearly than the literature had suggested.[31]

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[31] See Lutz Stemberg, "Der Seelsorger als 'change agent'". In *Modelle pastoralen Dienstes im Justizvollzug. Jahrestagung der Konferenz der evangelischen Pfarrer an den Justizvollzugsanstalten in der Bundesrepublik Deutschland und in Berlin (West) vom 6. bis 10. Mai in Waldshut,* edited by Peter Rassow. Celle: Konferenz der Evangelischen Pfarrer an den Justizvollzugsanstalten, 1974, 102-109, 104; Horst-Peter Schubert, "Seelsorge und Straffälligenhilfe". In *Kirche für Gefangene: Erfahrungen und Hoffnungen der Seelsorgepraxis im Strafvollzug*, edited by Gudrun Diestel, Peter Rassow, Otto Schäfer & Ellen Stubbe. München: Christian Kaiser Verlag. Schubert, 1980, 60-72, 64; Michael Walter, *Strafvollzug*. Leipzig: Boorberg, 1999, 218; Evangelische Konferenz für Gefängnisseelsorge in Deutschland. "Stellungnahme der Evangelischen Konferenz für Gefängnis seelsorge in Deutschland zum Projekt 'Gefangenentelefonseelsorge' des niedersächsischen Justizministeriums". Bad Alexandersbad, 2012.

Participants in the survey rejected the suggestion that prison chaplaincy work serves to ease the bad conscience of society. They also attached little importance to the goals of creating fellowship between those inside and outside, and seeing prison chaplaincy as a means of promoting civic engagement and providing support for released prisoners.

The Practical Activities of Prison Chaplains

1. The empirical study showed that the activity of the church employees is characterised by pastoral talks, particularly on a one-to-one basis. The latter make up about 55% of the usual working hours that a chaplain devotes to the prisoners. Another approximately 11% of worktime spent with prisoners is devoted to group discussions. By far the most important topics for pastoral talks are the prisoner's family and his or her problems in detention, with the prison staff and with fellow prisoners. The study shows that subjects like faith, God are less important. Also, less important are socio-political issues or the question of reconciliation with the victim.

The intensive care for prisoners in talks is based on the special relationship the prison chaplain develops with them. It turned out that the prisoners are able to have a dialogue at eye level with members of the clergy, which is not the case in their contacts with prison staff. The prisoners build up greater trust towards the church employees. One reason for this is the clergy's obligation to observe pastoral confidentiality. The study likewise confirmed that the chaplains, like all supportive bodies and professional groups, run the risk of being exploited by the prisoners. However, this risk can be countered, according to the respondents, by a transparency of the pastoral activities offered and through limiting the material assistance they give.

2. Having said this, individual pastoral care takes up about four times as much time as conducting services or holding similar events. Services of worship attract between 10 and 50 participants, sometimes as many as

80, but only about 15% of prisoners attend regularly. Prison officials are present during the services in an official capacity. They do not accept opportunities for worship going beyond their official duties. Members of the surrounding local congregations also attend prison services very rarely.

In the opinion of the chaplains interviewed, many prisoners attend services of worship to have a change of scene. The atmosphere there is different from elsewhere in the prison. Further, the prisoners are motivated to take this opportunity to live their faith, to calm down or to be able to share ideas with other prisoners. That they use these encounters as an opportunity for 'swapping deals' is secondary, the chaplains say.

3. Prison chaplains are, moreover, active in the field of social work. They are involved in the context of leisure and advice sessions that are frequently without any religious connection. For example, they accompany the inmates when they are allowed time out or are taken somewhere outside the prison, and they keep up contact with their family members. By contrast, chaplains do not tend to play much of a role in preparing the prisoners for their release.

Despite performing assignments in the field of social work, the survey showed that the professional group of those involved in prison ministry clearly differs from that of a social worker, particularly as the latter is not bound to observe professional confidentiality. Furthermore, the church employees often lack ways of implementing sanctions with respect to the prisoners. By contrast with social workers, chaplains do not need to focus on finding solutions and they have a lot more time for each individual.

4. Besides the prisoners, the prison staff are the group that receive the most intensive attention from the chaplains. By contrast, partly through lack of human resources, very little time remains for attending to the prisoners' relatives. The involvement of volunteers or members of local church congregations is fairly minimal and so attention to them does not take up much time.

Among the prison workforce, the chaplains work most closely with the management, the correctional officers, the social work service and the psychological service. They cooperate fairly well with all the actors in the prison, although the respondents rated the cooperation as all the better, the more intensive it is. Therefore, the daily contact with the prison management, the correctional officers and the social service works the best.

5. Another field of prison chaplaincy work is attending conferences and other meetings in the prison, along with sitting on various committees. Replies to different questions in the empirical study suggest that a share of much more than 60% of chaplains are involved in prison conferences. The frequency of attendance varies greatly, however. Many chaplains attend only one or two of a total of ten meetings in the prison.

6. The chaplains spend a comparable amount of time in continuing education as in other conferences and meetings. The status of outreach or awareness-raising is, however, extremely low in the context of prison chaplaincy. This most frequently take place when the chaplain gives talks, for example, to school classes, confirmation candidates, or congregational groups.

The Status and Situation of Prison Chaplaincy

The respondents rate the status of prison chaplaincy in the Catholic and Protestant churches as neither extraordinarily high nor particularly low (Ø 2.79).[32] It was striking, however, that the Protestant chaplains on average assumed a lower level of appreciation.[33] Moreover, the significance attached to prison chaplaincy is shown in the possibility of supervision and support in the field of pastoral in-service training. By contrast, the chaplains tend to feel inadequately supported in cases of

[32] The rating scale ranged from 1 (“very high”) to 6 (“very low”).

[33] Catholic chaplains Ø 2.55; Protestant chaplains Ø 2.98.

conflict with the Justice Ministry or the prison management. The fact that prison chaplaincy is not sufficiently appreciated by leading members of church governing bodies was reflected not only in the survey results (Ø 3.39) but also in the strong statement of one respondent that he did not need the "top people in the church".

The extent to which the conditions for pastoral care have changed in the last few years cannot be answered in a clearcut way. The chaplains' replies to this question corresponded to bell curve[34] with an emphasis on the neutral average. Finally, three factors were discerned for a functioning prison chaplaincy. First, an over-emphasis on security and order in the prison hampers the development of pastoral care in that setting. Second, the interest shown by the prison management is crucial when it comes to the amount of freedom enjoyed by the chaplains. Third, the space accorded to the work of the chaplaincy in a prison has a great influence on its effectiveness.

The Purpose of the Sentence and the Goals of Imprisonment from the Pastoral Angle

Working in a prison calls for a thorough engagement with the purpose of the sentence and the goals of imprisonment.

Asking the chaplains what they thought about the purpose of the sentence showed that they are essentially accessible to all reflection on the purpose of punishment. Retribution for the wrong done (Ø 3.89)[35], but also deterring other potential offenders (Ø 3.66) or the perpetrator him/herself from committing more deeds (Ø 3.28) tended to be considered less important. Yet these purposes were not categorically rejected. The most important goals were seen to be the absence of

[34] See Gaussian Theory of normal distribution for more information.

[35] The rating scale for questions about the purpose of the sentence and the goal of imprisonment ranged from 1 ("very important") to 6 ("very unimportant").

punishment in the future and the resocialisation of the offender (Ø 1.75).[36] This was, not least, because enabling a life without crimes and the reintegration of the offender comes closest to the biblical mandate for pastoral care.

Asked about the goals of imprisonment, the chaplains gave similar replies to those regarding the purpose of the sentence. They thought that the goals of imprisonment should serve the goals of resocialisation (Ø 1.57) and the protection of society (Ø 2.38). Further, they recognised the concern of strengthening society's trust in the legal order and defending it (Ø 2.74). They rejected the goals of deterrence (of the offender Ø 3.40, potential offenders Ø 3.90) and retribution (Ø 4.17) more strongly than they had regarding the question about the purpose of the punishment.

Conclusion

With the assistance of the empirical study on prison chaplaincy presented here we have gained a wide range of new findings about church employees, the goals of prison chaplaincy and the reasons for practising this form of pastoral care. It is instructive that the frequently male chaplains do not just attend to members of their own religion but equally relate to Muslims and those with no religion. Furthermore, the pastoral ministry is also available to the workers at the prison. The statements made by the chaplains are particularly remarkable regarding the great importance of personal pastoral conversations and the relationship between chaplains and social workers. The conceptual approach of the chaplains is revealed by the findings on how they understand the purpose of the sentence and the goals of imprisonment, not to mention the concrete presentation of the daily work and the situation of prison chaplains. This

[36] Other findings: strengthen society's trust in the legal order/ defence of the legal order Ø 2.69; protect the general public from the offender Ø 2.53.

can help all those involved with the execution of prison sentences to develop a better understanding of the concerns of prison chaplains.[37]

[37] There are dozens, perhaps hundreds of websites. Here are a few: "Cardiff Centre for Chaplaincy Studies". http://stmichaels.ac.uk/chaplaincy-studies; "Committee for the Prevention of Torture". http://www.cpt.coe.int; Council of Europe. http://www.coe.int; "Dutch Spiritual Care Service". https://www.dji.nl/Organisatie/Locaties/Landelijke-diensten/Dienst-Geestelijke-Verzorging/index.aspx; "England and Wales Prison Service Faith and Pastoral Care". http://www.justice.gov.uk/search?collection=moj-matrix-dev-web&form=simple&profile=_default&query=faith+and+pastoral+care+for+prisoners; "European Prison Observatory". http://www.prisonobservatory.org; "Evangelical Alliance". http://www.eauk.org/idea/hope-for-prisoners.cfm; "German Protestant Prison Chaplains". http://www.gefaengnisseelsorge.de/; "International Commission for Catholic Prison Pastoral Care". http://iccppc.org; "International Good News & Jail Prison Ministry". http://international.goodnewsjail.org; "IPCA (International Prison Chaplains' Association) Worldwide". http://www.ipcaworldwide.org; "IPCA Europe". http://www.ipcaeurope.org; "Prison Fellowship International". http://www.pfi.org; "Prisons Week" (UK churches week of prayer for prisons). http://www.prisonsweek.org; "Swedish Prison Chaplaincy". https://www.kriminalvarden.se/globalassets/publikationer/forskningsrapporter/andlig-vard-inom-kriminalvardenpdf; "Tilburg University Centre for Prison Pastoral Studies". http://www.centrumvoorjustitie pastoraat.nl/Welcome.htm; "Ukraine Prison Pastoral Care". http://kapelanstvo. org.ua; "World Prison Brief". http://www.prisonstudies.org [all accessed 15 June 2016].

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THE RIGHTS OF PERSONS WITH DISABILITIES

Part I – Ingrid Svensson; Part II – Arne Fritzson

This chapter has been divided into two part kept together through the issue of human rights and persons with disability. The first part deals with the international human rights standard and disability while the second part relates to the church and theology.

Part I: The Rights of People with Disabilities

When it comes to disability and human rights, the most important instrument is the Convention of the Rights of Persons with Disabilities (CRPD), which was adopted by the General Assembly on the 13th of December 2006. The convention entered into force on the 3rdof May 2007, less than six months after its adoption. The CRPD has been described as representing an important shift in perspective, or even as representing a paradigm shift, concerning the way persons with disabilities are perceived. It is also the most recent convention of the United Nations (UN) and as such, it is a binding document, in contrast with, for instance, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities from 1993. Currently, there are 177 ratifications to the convention and 92 ratifications to its optional protocol. Together with

state signatories, the European Union (EU) is also a party to the CRPD. A monitoring committee, the Committee on the Rights of Persons with Disabilities overlooks the implementation by the parties to the convention. The committees 19th session was held in February-March 2018.

A Shift of Perspective

The CRPD is often described as representing a shift in the way persons with impairments and disability are perceived. This includes a shift from an individual focus, where disability is understood as being an inherent and often physical problem for a given person, to a focus on societal barriers for inclusion of people with *different kinds* of impairment.[1] In the latter case, the problem is understood to be social in nature. And with this perspective, societies lack of modification and adjustment are seen as the main reason for why people are being disabled and cannot fully enjoy the human rights already given to them. Therefore, *the solution* to the problem of impairment/disability is also understood to be social or political in nature, not primarily inherent or medical. At the same time, this implies a shift to a human rights perspective, since the barriers to inclusion in society are understood as barriers to the full exercise of human dignity and of human rights.[2]

The Role of Civil Society

The international disability rights movement has played an important role in bringing about the shift in perspective which is described above. Given

[1] Earlier on, the concept *handicap* has been used, but it is now replaced by the two concepts *impairment* and *disability.*

[2] See for instance the preamble of the *Universal Declaration of Human Rights* (UDHR) from 1948.

that the development of the convention has been a comparatively open process,[3] this fact also applies to the role of civil society in more general terms. However, as an agenda-setting social movement, people and organisations concerned with disability rights, were very influential, not only concerning the political process leading up to the convention, but also concerning the very content of this crucial document.[4] Rightfully, the CRPD has been described as a convention for the 21st century.[5] One reason is this very important shift in agency: Instead of being "an object for … (rehabilitation etc.)", persons with disabilities are now the primary subjects demanding their genuine human rights.[6] The slogan "Nothing about us without us", nowadays often used by social movements that want to bring about political change, was in the first run associated with the political struggle of the disability rights movement.[7]

However, in the beginning of the process, yet another UN convention was not a given matter in the discussions held. Disability rights were not seen as a priority and an argument often heard was that the rights of persons with disabilities were already covered by other human rights

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[3] Arlene Kanter, "The Promise and Challenge of the United Nations Convention on the Rights of Persons with Disabilities". *Syracuse Journal of International Law and Commerce* 34:2 (2007) 287-322.

[4] For instance, the International Disability Caucus, IDC, an umbrella organisation, representing more than 100 different organisations, see Stefan Trömel, "Personal Perspective on the Drafting History of the United Nations Convention on the Rights of Persons with Disabilities". In *European Yearbook of Disability Law*, edited by Gerard Quinn and Lisa Waddington. Antwerpen: Intersentia, 2009.

[5] Lisa Waddington. "Breaking New Ground: The Implications of the Ratification of the UN Convention on the Rights of Persons with Disability for the European Union". In *The UN Convention on the Rights of persons with Disabilities: European and Scandinavian Perspectives*, edited by Oddný Mjöll Arnadóttir and Gerard Quinn. Leiden: Marinus Nijhoff, 2009.

[6] Ibid.

[7] See for instance James I. Charlton. *Nothing About Us Without Us: Disability, Oppression and Empowerment*. Berkeley: University of California Press, 1998.

instruments. Yet, with the influence of organised interests, the need of a binding convention gradually appeared to be more and more urgent. An argument for a new convention was the discrepancy between the rights expressed, for instance in the International Covenant on Economic, Social and Cultural Rights (ICESC), and the widespread lack of realisation of the very same rights for persons with disabilities. It can be said that a growing awareness of the statistical link between poverty, on the on hand, and disability, on the other, provided evidence that made it impossible to overlook or dismiss disability rights. This, in turn, paved the way for a new convention.

Below follows a short summary of the content of the CRPD. In the following section, the political process leading up to the convention is described. In that context, other important human rights instruments concerning disability are presented and related to the CRPD.

The Content of the CRPD

The creation of the CRPD was conditioned on the fact that it would not include any special rights for persons with disabilities.[8] Instead the CRPD was supposed to specify and contextualise rights and freedoms already given in other UN instruments. The convention is not formally divided into parts, except for the division between the non-binding preamble and the following articles, 50 in number. Thus, in articles 5 to 30, where the specific content of the rights given can be found, different generations of rights – civil and political, social, economic and cultural – are mixed in a non-hierarchical order. The first four articles in the convention specify aim, definitions, important principles and general obligations. The concluding articles (31 to 50) concern institutional facts such as national

[8] Rosemary Kayess and Phillip French, "Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities". *Human Rights Law Review* 8:1 (2008) 1-34.

and international implementation, the role of the committee, reporting and other obligations of the signatories. The last ten articles (41 to 50) concern the formal rules guiding the convention (depository, signature, entry into force, reservations and the like).

To start with the preamble, it is explicitly informed by the so called social model of disability[9] in that it in (e) underlines that disability results from "the interaction between persons with impairments and attitudinal and environmental barriers" in society. Thus, focus and problematisation is shifted in direction to the surrounding environment. Moreover, the concept of disability is there described as an "evolving concept". But, except from that, no further definition is given. In Article 1, though, persons with disabilities are said to "include those who have longterm physical, mental, intellectual or sensory impairments". The mentioned impairments may, according to the same article, hinder full and equal participation in society "in interaction with various barriers".

The first articles of the convention are general in character and the very purpose of the CRPD is found in Article 1; Hence, the purpose of the convention is to promote, protect and ensure the *full enjoyment* (my italics) of rights and freedoms for persons with disabilities. In correspondence with what has been said above, Article 2 on definitions, does not include a clear definition of disability. What is defined, though, is "discrimination on the basis of disability" as well as definitions of communication, language, reasonable accommodation and universal design – all of which are central concepts for the realisation of rights for persons with disabilities. In Article 3, non-discrimination, accessibility, respect for difference and acceptance of human diversity are listed as general principles. And so are equality, effective participation and inclusion. The general obligations of the State Parties are listed in Article 4.

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[9] See Michael Oliver, *The Politics of Disablement*. Basingstoke: Macmillan, 1990.

The following articles (5-30) focus on rights which the state parties recognise in relation to persons with disabilities, see for instance, Article 5 on equality and non-discrimination, a very important one, Article 9 on accessibility (including appropriate forms of assistance to ensure access to information and new communication technologies) and Article 12 on equal recognition before the law. The right of living independently and being included in the community is developed in Article 19, which underlines the right of being able to make "choices equal to others". Likewise, the signatories are obliged to "take effective and appropriate measures to facilitate full enjoyment by persons disabilities of this right and their full inclusion and participation in the community". More specifically, this includes the right to choose place of residence (Article 19 a) and the right to have access to personal assistance (Article 19 b). Amongst others, there are articles on awareness-rising (Article 8), on the right to life (Article 10), on education (Article 24) and on work and employment (Article 27).

The General Comments

The General Comments issued by the Committee on the Rights of Persons with Disabilities gives us a hint on which articles and, correspondingly, which content of the convention that, so far, has been prioritised in the monitoring process. These comments, six in number, have focused on equal recognition before the law,[10] accessibility,[11] women and girls with disabilities,[12] right to inclusive education,[13] right to independent living,[14] and, equality and non-discrimination.[15] The seventh General Comment,

[10] CRPD/C/GC/1.
[11] CRPD/C/GC/2.
[12] CRPD/C/GC/3.
[13] CRPD/C/GC/4.
[14] CRPD/C/GC/5.
[15] CRPD/C/GC/6.

which is underway in 2018, concerns participation with persons with disabilities in the implementation and monitoring of the convention.

"On an equal basis with others"

Although the prerequisite for developing the CRPD was that no special rights for persons with disability should be included in the convention, some of the articles, perhaps arguably, come close to expressing special rights. For instance, it can be discussed if not Article 26 on habilitation and rehabilitation is an example of special rights. This can probably also be said about Article 19 f-h on accessibility to communication and information technologies. This may be so because the CRPD often states that the human rights should be enjoyed "on an equal basis with others" and sometimes that equal basis demands special arrangements with respect to the obligations of the signatories. Another example is Article 24 on education, according to which states are obliged to take appropriate measures to provide equal opportunities for persons with disability in learning and education. These (necessary) measures may come close to special rights.

The Political Process Leading up the Convention

Disability (or handicap, which was the first concept in use) has been on the UN agenda at least since the 1950s, but by then from a strictly medical perspective. Up to 1971 General Assembly resolutions on rehabilitation mirrored the perspective of medical experts and other welfare professionals. A resolution from December 1971[16] illustrates the first move towards a social, and therefore more inclusive, perspective on

[16] *Declaration on the Rights of Mentally Retarded Persons*. General Assembly resolution 2856 (XXVI).

disability.[17] In 1981, the International Year of Disabled Persons (IYDP) was proclaimed by the UN,[18] soon followed by an International Decade of Disabled Persons, lasting from 1983 to 1992.[19] In the year in between, in December 1982, a World Programme of Action Concerning Disabled Persons was adopted by the UN General Assembly.[20] The World Programme was a result of the IYDP and is of importance, firstly, because it explicitly brought various implications of impairment and disability on the UN agenda. The programme opened up for important discussions. And in the context of the "disability decade", the issue of a binding international human rights treaty on the rights of disabled persons came to the fore, as in a meeting in Stockholm in 1987, where a recommendation of developing a binding convention was issued for the first time. The very same year, Italy proposed the development of a convention to the General Assembly and Sweden did the same in 1989. However, theses proposals were refused and nothing important happened for the time being.[21] Instead, the Economic and Social Council, ECOSOC decided to develop a non-binding document and in 1993 the General Assembly adopted the Standard Rules on the Equalization of Opportunities for Persons with Disabilities.[22] Though non-compulsory in character, the 22 rules were – and are – important for introducing and establishing a human rights perspective on disability.[23] With the Standard

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[17] Lars Lindberg and Lars Grönvik, *Funktionshinderpolitik: En introduktion*. Lund: Studentlitteratur, 2011, 141.

[18] A/RES/31/123; A/RES/36/77.

[19] A/RES/39/26.

[20] A/RES/37/52.

[21] Lars Lindberg and Lars Grönvik, *Funktionshinderpolitik: En introduktion*. Lund: Studentlitteratur, 2011, 142.

[22] A/RES/48/96.

[23] Gerard Quinn, "A short guide to the United Nations convention on the rights of persons with disabilities". In *European yearbook of disability law*, edited by Gerard Quinn and Lisa Waddington, 89-114. Antwerp: Intersentia, 2009.

Rules, a special Rapporteur, reporting to the Commission for Social Development on the implementation of the rules, was introduced into the UN system.[24] Following the refusal in the General Assembly, Ireland choose to work for a report on how the question of disability was handled and effectuated in the UN system. In order to make the rights of persons with disabilities visible, the following report by Quinn and Degenerer, *Human Rights and Disability*, argued for the development of a binding convention.[25]

The Ad Hoc Committee

In December 2001, just months before the report by Quinn and Degenerer was published, Mexico made a new proposal to the General Assembly which, quite unexpectedly, voted for the establishment of an Ad Hoc Committee with the task *to consider* proposals for "a comprehensive and integral convention to promote and protect the rights and dignity of persons with disabilities". The approach should be holistic. Suddenly and in this phase of the process, there were no opposition to the proposal. Perhaps the lack of opposition depended on the wording "to consider" a convention. However, the Ad Hoc Committee was established and its work resulted approximately five years later in the Convention on the Rights of Persons with Disabilities, which, finally, was adopted by the General Assembly on the 13th of December in 2006.[26]

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[24] Lars Lindberg and Lars Grönvik, *Funktionshinderpolitik: En introduktion*. Lund: Studentlitteratur, 2011, 143.

[25] Gerard Quinn and Theresia Degener, *Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability*. Geneva: United Nations Press, 2002.

[26] A/RES/56/168; A/RES/61/106.

The CRPD in Relation to Other UN-instruments

As already stated, the CRPD is the most recent UN convention. Comprehensive and holistic as it is, it is of great importance, but the CRPD is not the only document with reference to disability. So, what are then the connections to other and earlier UN instruments?

So far, we have mentioned the still very important Standard Rules on the Equalization of Opportunities for Persons with Disabilities and the World Programme of Action Concerning Disabled Persons. In general terms, discrimination has long been prohibited, see, for instance, Article 2 in the Universal declaration of Human Rights (UDHR) where "everyone is entitled to all the rights and freedoms… without distinction of any kind". Article 25 in that same declaration states that:

> Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Still, the above is spoken of in general terms. Disability is not explicitly mentioned in the UDHR.[27] On the other hand, General Comment No. 5 from 1994 on Persons with Disabilities by the Committee on Economic, Social and Cultural Rights explicitly defines discrimination in terms of lack of accessibility.[28] Understanding discrimination in terms of accessibility, or rather the lack thereof, has been, and still is, instrumental for the disability rights movement and for promoting rights of persons with disabilities.

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[27] UDHR, Article 2 and Article 25, respectively.

[28] Committee on Economic, Social and Cultural Rights, General Comment No 5 (1994).

Some years earlier, in 1989, The Convention on the Rights of the Child (CRC) becomes the first convention to explicitly mention disability rights. Article 23 (1) of the CRC states that

> a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

This is then further developed in 2 to 4 of the article. See also General Comment No 9 Rights for Children with Disabilities from 2006, in which the convention committee further underlines the importance of children's disability rights.[29]

Moreover, as early as 1991, The Committee on the Elimination of Discrimination against Women focus on disabled women in General Recommendation No.18. The committee recommends the state parties to

> provide information on disabled women in their periodic reports, and on measures taken to deal with their particular situation, including special measures to ensure that they have equal access to education and employment, health services and social security, and to ensure that they can participate in all areas of social and cultural life.[30]

Thus, earlier recommendations are clearly in line with what is later to come with the CRPD. And in the CRPD the recommendations correspond with Article 6 on women with disabilities and Article 7 on children with disabilities.

When it comes to specific regional instruments, the Organization of American States adopted The Inter-American Convention on the

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[29] CRC/C/GC/9.

[30] Committee on the Elimination of all forms of Discrimination against Women. General recommendation No. 18, tenth session. 1991. Disabled Women.

Elimination of All Forms of Discrimination Against Persons with Disabilities in 1999.[31]

The ECHR, on the other hand, does not explicitly mention disability rights. But given the general prohibition of discrimination in Article 14, it is possible to argue against discrimination in relation to other more specific articles of the convention, for instance, Article 8 on Right to respect for private and family life.[32] This is so, because private and family life of persons with disabilities are not always respected in a proper way, not in Europe, and not around the world. Other articles in the ECHR may, of course, be of equivalent importance. As the international disability rights movement long has underlined, the matter of disability rights is to a very large extent about application of rights already given.

Part II: Theology, the Church and the Rights of Persons with Disabilities

I am active in the ecumenical movement on disability. I have a mobility impairment, cerebral palsy. In the ecumenical movement, I meet friends who are visually impaired. If I compare myself with them and focus on our abilities, I can see that we are very different. But we are regarded as representatives for the same group, persons with disabilities, and we get in to decision making bodies from the same quota, persons with disabilities.

How come that persons who live with such different conditions are lumped together in the same category? What kind of idea is that? It is important to know that the whole discourse on disability is a political idea. It was designed to name a group of human beings that needed some special care that the political system should provide for.

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[31] Organization of American States. AG/RES. 1608 (XXIX-O/99).

[32] ECHR, Article 14 and 8, respectively.

There are a lot of different conflicting definitions and models how to understand the concept of disability. This is a terminology that is immersed in political conflict and the essence of this conflict lies in the very definition of the concept. It is a conflict about who are the persons with disabilities.

Theology

The theological discourse on disability has exploded over the last decades. There are many fields in this area. A few years ago, the major topic for books on disability and Christian theology was about inclusion in the churches. The major question was how the churches should be communities that are accessible for persons with disabilities. Nowadays there are studies that represent different perspectives. Some studies come from religious studies while others have a biblical perspective and explore how the conditions of persons with different impairments are reflected in the Bible. A special field of interest has been how to interpret the many healing stories in the Bible, especially in the four gospels, from the perspective of persons with different impairments. We have also many stories in the Bible where different impairments, such as blindness, are used as metaphors for sins and moral failures.[33]

There are also studies on the disability issue from church historical perspectives. For instances, how should we interpret and understand what persons in the history of the churches have written about living with different impairments.

The question about how to understand impairments and disabilities is closely linked with the question about theological anthropology. What does it mean to be a human being from the perspective of Christian faith? And closely linked is the whole aspect of if there is a connection between our human disappointments, evil aspects of life and sin. Nowadays, not

[33] See, e.g., Matt. 23.

many persons would say that a disability is a punishment for human sins, but could there be a connection? How about if someone gets an impairment because of a criminal act done by themselves or someone else, i.e., an accident caused by a drunk driver.

This relates to the theological question: What does the fact that there exist persons with different impairments in this world say about God and who God is? Is God all powerful and omnipotent? Do disabilities exist because God wants them to exist or is it something unfortunate that says something about the tragedies in this world?

If God wants that some persons should live with disabilities, why does God want that? Is it a blessing or a curse, a punishment or a secret sign of God's providence? Is the fact that some persons live with impairments a sign of a beautiful plurality in God's creation or is it a sign of the tragedies that is a part of human life in God's world?

When we ask ourselves these questions we need to remember that the discourse on impairments and disabilities is not primarily a theological discourse, but a political one, as was said previous, and which often results in legal reforms and rights (more on this below). It is a political idea that we should make a distinction between persons with or without disabilities. When we reflect theologically on disability we engage in political theology.

So, the idea that there is one theological interpretation that covers every impairment and disability is an idea that needs to be questioned. For some a disabling condition is an integral part of their identity, that is who they are. For others it is a sign of an accident, an unfortunate memory from an incident or a sickness that they rather would have undone.

What is important to remember is that disability is a condition that all of us can get and most persons that become old will at some point of their lives live with an impairing condition. So, whether we like it or not we who live with impairments is a reminder to other persons of their own vulnerability.

This is a fact that trigger defence mechanisms when persons meet persons with different impairments. In the past, persons with impairments were hidden away in special shelters or in institutions. It can be highly stigmatising to live with an impairment or to have a close relative that has an impairment. There are many reasons to keep a distance to persons that live with impairments. Nowadays the distance is seldom kept by physical separations, at least not in the western world, but there are other ways to keep a distance.

One way to do this is to view people with impairments as persons that are very different from us and almost impossible to identify oneself with. They are persons with a heroic ability to face problems and hardships or they are tragic victims for the cruel lack of fairness in our world. Both these strategies help to give reasons for not identifying oneself with persons with impairments and thus not recognize one's own vulnerability in lives.

This is a kind of exoticism that might seem attractive. But it can become a stumbling block when working for equal rights for persons with disabilities. Why should persons with disabilities have the same rights as their peers without disabilities if they are so different from others? No, to get a proper view on the conditions and concerns for persons with impairments we need to recognize that their experiences of a life with disabilities is part of our common experience as humanity of what it is to be a human being in God's world. Their experiences are part of the general anthropology about human beings, not a special anthropology that deals with a special kind of human beings.

So, what is the theological response to the fact that in God's world there are persons that lives with different impairments? It must be an ongoing conversation about the conditions of life that we all share. We are all vulnerable creatures. We all must face our own mortality. Persons with different impairments are not more vulnerable or more mortal than others. But their vulnerability is often more obvious.

Current Issues

The discourse on disability is a political discourse, as said earlier. The theologians that discuss disability must face political conflicts. The conflict lies in the very definition of disability.

It says something that the CRPD has no definition of the term "disability" because they could not agree on one. It leaves us with the somewhat awkward situation that we have a UN convention that stipulates many legal rights for a group of people, but it is not clear who are the persons that have all these rights and who can claim those rights as theirs.

Generally, the convention tends to be advocates for the rights of persons with disabilities that want a broader definition of the terms "impairment" and "disability", while politicians who make the financial decisions want a narrower definition so that the number of people that they have to provide service for does not become too high. It is interesting that in statistics, the percentage of persons in a population that have disabilities is often higher in more developed countries because the numbers of conditions that is being labelled as disabilities increases. So, the paradox is: more development, more disabilities. One example is dyslexia. In a more developed social context this condition becomes more of a problem.

A concern with regard to justice is the rapid global development of medical technology in the areas of artificial reproduction. Combined with genetic screening and testing, artificial reproduction gives prospective parents the option of "informed choice" about specific genetic characteristics of their offspring. In some western countries the number of children born with certain conditions, e.g., Down's syndrome, is reduced to a very small number.

This raises questions about the sanctity of human life and what are the factors that make human lives valuable. From a Christian perspective, life

is a gift from God and has a value as such. Every human life is created in the image and likeness of God. This is an ethical and a political stance. If we argue that human life is valuable regardless of any impairment, then we need to organise our society and our human fellowship in such a way that every human being experiences a certain quality of life. That means that we have to form our society so that it provides good social services for persons with different impairments and their families. It also poses a challenge to actors in the civil society, such as churches, to ask themselves if they are communions that are open, accessible, and welcoming to persons with different impairments.

Good Practice

So, what are the challenges for the churches in relation to persons who live with different disabilities? One way to express it is to say that the churches should be accessible communities for all. Accessibility is to remove every barrier that prevents the churches for being inclusive communities for all who want to be there. When we think about barriers for accessibility for persons with disabilities we tend to think about physical obstacles such as steps that prevent those who uses wheelchairs to access buildings, bad lighting that creates problems for those who are visually impaired, or when it is hard for people to be part of a gathering because they have problems hearing what is being said because of hearing impairment.

But there are also other kinds of barriers for persons with disabilities. Many barriers are attitudinal. There are many prejudices against persons with different disabilities. Many persons feel awkward when they meet persons with disabilities. That creates problems for persons with disabilities. To have a disability is to be heavily stigmatised in many social contexts. It all comes down to our anthropology, what we understand a human being to be and what we see as a meaningful human

life. In a Christian context the question about anthropology is never isolated from the question of theology, who God is.

It is possible to claim that accessibility when it comes to disability in churches has four dimensions: physical, attitudinal, anthropological, and theological. The fact that I use the term "dimension" as a metaphor for the different aspects of accessibility signals that these aspects are interrelated. The physical form of a room is a theological statement. If a place for worship is accessible for persons in wheelchairs everywhere but not on the stage at the front where the persons who lead the worship are, then that says something about the idea about who should go where in the room. Our theology is reflected in our attitudes and our anthropology.

One way of making our churches accessible and inclusive communities for persons with different impairments is how we talk about the Bible's way to describe sickness and impairments. There are many places where health problems are seen as divine punishment for sins. Numbers 12 and 2 Chronicles 26 are examples of that and there are many more. We have also the many stories about miraculous healing.

How do we in the churches educate and preach about these stories? Do we do it with a sensitivity towards those that live with similar conditions? Are their experiences relevant when the churches form their theology about what it means to be a human being in God's world? In many church traditions prayers that the sick should have health, sometime with anointing of oil, is a vital part of the tradition. That can be a very loving and caring practice when it is done with care, sensitivity, and respect. But when those factors are not there it can be very oppressive and troublesome for persons with impairments.

This can also be a question for pastoral counselling. Persons with impairments can need advice from a pastor to handle their lives, their joys and disappointments, just like any other. When persons with impairments meet a pastor for pastoral counselling it is important that the fact that the person has an impairment gets a relevant proportion. It is easy both to pay

too much or too little attention to the realities that an impairment brings to a human life.

Persons with impairments do not have other existential questions than others. They have concerns that are like others. It can be important to remember that persons who live without an impairment can have similar problems and questions. But a person who has an impairment can pose the question in a different way. If persons have impairments, they can wonder how their problems and questions relate to their impairments. If they worry for their future, for example, if they will get a job or a happy family life, they can whether the fact that they live with impairments change their situation. The fact that they can ask such a question make their situation different than others. It gives their existential question a different dimension. It is important to be aware of that dimension for a church worker who meets persons with impairments and their relatives.

Proposal for Action

We have still a long way to go if we want our societies and our churches to be fully inclusive for persons with impairments. There are many barriers that need to be pulled down in order to make societies and churches communities that are fully accessible for persons with different disabilities. A new legal tool we have in working with these issues that was mention above is the CRPD that was adopted 2006. Before we had the convention we did have the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities from 1993.

At that stage 2006, a lot of UN member states were of the opinion that existing human rights documents seemed to guarantee persons with disabilities the same rights as other persons. In the beginning of the Standard Rules reference is made to other UN statements, such as the Universal Declaration of Human Rights, the CRC and the Convention on the Elimination of All Forms of Discrimination against Women.

The fact that CRPD was adopted signalled a change of view. The Standard Rules and the other human rights documents did not provide a tool that was strong enough to accomplish equalisation of opportunities for persons with disabilities. So, the CPRD, though it seems progressive, can be seen as signalling a failure on part of the international community. It was not enough to have standard rules and to say that persons with disabilities are human beings just like any other child, women or men and have the same human rights as all human beings.

We need to be aware of this ambiguity. CRPD is a good and necessary tool in the international legal work for the rights of persons with disabilities, but it is unfortunate that it is needed. Furthermore, it is part of process that makes persons with disabilities more different from other persons. In such a way it can enforce exactly what it was intended to weaken: processes that stigmatise persons with disabilities.

It is important to see that that ambiguity is a necessary part of the whole discourse on disability. Regardless of what model we use to define terms like "impairment" or "disability" they will always be burdened with as history of how a group of persons were picked out and define as a category of persons that are in some way separated from the others. They are different and such differentiation can always lead to a negative stigmatisation. The only way to handle that ambiguity in a responsible way is to acknowledge it. We need to discuss the special conditions that persons with impairments have and it that way make a differentiation but we need to do that differentiation in a way that is not oppressive.

How do we make our church buildings accessible for persons with different impairments? Is there a check list with different efforts to see if we are doing it right? No. This is not so easy, because the field of disabilities is so vast and the conditions that different persons with different impairments have are very different. What is right for a specific person may not be good for others. It is not a fixed list with different actions that can help us here. Rather, it is a question of mindset. We need

to be prepared to change our ways of doing things in the churches to adapt them to persons with different impairments. If it is a person with a wheelchair that wants to be a part of our community, we need to take a certain kind of action. But if the person has an intellectual impairment or is blind, then we need to do something quite different.

What we need is an open mind. This can require that we accept that things sometimes take longer time or do not work as smoothly as we are used to. We may also have to communicate that we do not have all the knowledge and that we are in a learning process and that we need more information in order to be a more accessible community. This might make us and persons we meet uncomfortable at some points, but we cannot be prepared for every possible situation. The process of becoming a community that is accessible for persons with different disabilities starts with the ambition to become that and the willingness to make the effort such an ambition demands of us.

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THE RIGHTS OF INDIGENOUS PEOPLE

Gerard Willemsen

Introduction

Indigenous people are present in many countries in the world. It is estimated that around 500 million people belong to around 5000 indigenous peoples. During history, indigenous peoples have been discriminated against, marginalised, and regarded sub-human in many countries. Terrible violations and even ethnic cleansing have occurred. In too many cases, the churches have been complicit in this. But even today, discrimination and marginalisation are too common in many countries. This can be expressed in different ways: difficulties in getting jobs, lack of education in mother tongues, lack of influence in exploitation of natural resources in their traditional lands, etcetera. Also, in churches, indigenous peoples can still experience discrimination today. At the same time, there is a rising awareness of the situation of indigenous peoples in churches and in ecumenical organisations.

There are somewhat differing definitions of the term indigenous people, but the most widespread is the one used by the Indigenous and Tribal Peoples Convention, 1989, by the International Labour

Organization (ILO Convention 169).[1] Indigenous peoples are considered people who have a descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. The definition for tribal people, to which the ILO Convention 169 also applies is: peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations. Here I will include tribal peoples in indigenous peoples.[2] Both the ILO Convention 169 and the UN Declaration of the Rights of Indigenous Peoples (UNDRIP) stress the principle of self-identification as fundamental.[3]

Indigenous Peoples in Europe

Sometimes it is said that the Saami in northern Scandinavia and Russia are the only indigenous people in Europe. Many feel that the situation of the Saami is comparable to that of indigenous peoples in countries, colonised by Europeans. The northernmost areas were colonised by Sweden (then including Finland) and Norway. There is a history of oppression of the Saami and their culture and language, but today there is recognition of them as indigenous people. Even if rights still are violated as we will see. But within Europe there are many more indigenous peoples. In the European part of Russia, there are several peoples, like

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[1] *ILO Convention 169 – Indigenous and Tribal Peoples Convention.* http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169 [accessed 15 Feb. 2016].

[2] ILO Convention169 article 1.

[3] Ibid.; UNDRIP article 33.

Komi and Nenets in the far north or Mari, Udmurt, Bashkir and Tatar in the south. Livonians and Seto in the Baltics are other examples. Those peoples are in every way fitting into the several definitions of indigenous peoples. The indigenous peoples in Russia are facing everyday discrimination, also quite often within churches, according to what they report themselves.

One could argue to include some of the western and southern European minorities as indigenous peoples. They may be part of the majority culture to a bigger extend but still are defined by their own language, culture and social customs. We can think of e.g., Basques, Welsh, Bretons, or Frisians and many more. Some of them have become more integrated into the majority culture than others, and in some there is a growing awareness of their own culture and language. More and more voices are raised to be recognised as indigenous and also here there are reports of past and ongoing discrimination.[4]

Current Debate

During the last decennia we can see that there has been a rising self-awareness and self-consciousness among indigenous peoples. All over the world, indigenous peoples have chosen to become more visible in their societies, express pride in their cultures and languages, and demand that their rights are respected. This has led to a number of national and international bodies, as well as legislation to guarantee the rights of indigenous peoples. Issues of land rights and rights to natural resources are currently debated in many countries. One example is discussions on the establishment of mining activities on traditional lands. This has not only financial aspects (who benefits) but also ecological (disturbances for

[4] On the situation of the Welsh, see, e.g., Dewi Hughes. *Castrating Culture: A Christian Perspective on Ethnic Identity from the Margins*. Carlisle: Paternoster Publishing, 2001.

traditional living, such as the cutting of reindeer migration routes in the case of the Saami's in Scandinavia) and religious (the exploitation of sacred hills in Indian Orissa). The exploitation of traditional lands is among the biggest problem of indigenous peoples. Currently, discussions about mining are going on in several countries. Mining makes often a very big impact on the land. Indigenous organisations are more and more aware of this and challenge both authorities granting concessions and mining companies. In Sweden and Norway, and also in Russia such debates are going on.

But the basic problem is not the exploitation in and of itself. The basic problem is who possesses the land. Traditional lands have historically to a large extent been taken by colonising (European) powers. Today, traditional views on land ownership cannot be reconciled with the views of the official juridical system. For example, the traditional Saami view on land is not one of individual ownership, but of a collective right to use and of stewardship. Also, among Native Americans, there is the traditional view that land is not ours to own, but to be stewarded. As became clear in a seminar on land issues with a number of indigenous representatives as well as legal experts, held in Kiruna some years ago, the western legal systems are sometimes too different from the indigenous way of thinking to be able to even handle the indigenous claims in a meaningful way. Law expert Marie Hagfors stated that Swedish law could in principle handle claims of ownership, but that a claim of right to use the land based on tradition "since time immemorial" is difficult to judge in the system. A First Nation representative, Terry LeBlanc from Canada, rightfully questioned whether the legal system of the coloniser (Sweden) really should prevail over the traditional system of the Saami.[5]

Apart from mining and other exploitation forms, there is the problem of land grabbing: settlers from outside coming in and taking land from the

[5] This seminar was held in Kiruna, Sweden at the World Christian Gathering of Indigenous Peoples, 2007.

indigenous people by force. We have seen this happening very recently on a larger scale in Nicaragua, where many settlers take collective lands which according to the law cannot be sold to private persons. In one area, half of the around 60 Mayangna in the tropical forests who have taken part in one of our projects have lost their livelihood to outsiders during 2014 and 2015.[6]

From a European point of view, we cannot limit ourselves to what is happening in Europe. European interests are highly influencing the situation of many indigenous peoples in many countries all over the world. As churches from Europe, we need to be involved in the problems of indigenous peoples connected to churches we relate to.

Doctrine of Discovery

During later years, the so-called Doctrine of Discovery has been discussed a lot. The Doctrine is a principle, going back to papal bullae from the 15th century.[7] Those were written to justify dominion of the European Christian nations over any pagan peoples and nations. These writings regulated the colonisation of the Americas by European nations. The same principle of Christian nations having the right to colonise and to exploit and rule pagan lands and to take the people into slavery or even kill them if they did not subdue to the Christian "discoverers" was soon taken over by the English (Anglican) king and by other protestant nations. In 1823, the principle was incorporated in United States law through the Supreme Court (Johnson vs. M'Intosh), granting the United States as a Christian nation absolute sovereignty over North America – despite earlier treaties

[6] Those families were part of a development program funded by the Swedish Sida, where they worked with small-scale agriculture. The program had ended by 2014.

[7] *Dum Diversitas*, 1452 http://doctrineofdiscovery.org/dumdiversas.htm; *Romanus Pontifex* 1455. http://www.papalencyclicals.net/nichol05/romanus-pontifex.htm; *Inter Caetera* 1493. http://www.papalencyclicals.net/Alex06/alex06inter.htm [all accessed 22 Sept. 2017].

with Native American nations.[8] This case has even in recent years been cited in courts in various countries in cases between states and indigenous communities. The World Council of Churches (WCC) Executive Committee wrote in 2012:

> Consequently, the current situation of Indigenous Peoples around the world is the result of a linear programme of "legal" precedent, originating with the Doctrine of Discovery and codified in contemporary national laws and policies. The Doctrine mandated Christian European countries to attack, enslave and kill the Indigenous Peoples they encountered and to acquire all of their assets. The Doctrine remains the law in various ways in almost all settler societies around the world today.[9]

Without stating so explicitly, the same way of thinking can be seen in many other conflicts between indigenous communities and majority societies, such as in the colonisation of the Saami lands in Sweden and Norway.

In recent years, a number of important churches have repudiated the Doctrine – however still a minority. Among them, the Episcopal Church (2009), the Anglican Church of Canada (2010), the United Methodist Church (2012) as well as in Europe the Uniting Church in Sweden (2013).[10] In 2012 the Executive Committee of the WCC denounced the

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[8] *Johnson v. M'Intosh* 21 U.S. 543 (1823).

[9] *Statement on the doctrine of discovery and its enduring impact on Indigenous Peoples*, WCC Executive Committee, 17 Feb. 2012.

[10] The Episcopal Church Exposes the Doctrine of Discovery. https://www.episcopalchurch.org/library/topics/doctrine-discovery; The Anglican Church of Canada, *Repudiate the Doctrine of Discovery.* http://archive.anglican.ca/gs2010/resolutions/a086/; Equmeniakyrkan, *Om Doctrine of Discovery.* http://equmeniakyrkan.se/om-doctrine-of-discovery/ [all accessed 22 Sept., 2017]. United Methodist Church, *Book of Resolutions* no. 3331, 2012.

Doctrine as fundamentally opposed to the Gospel and as a violation of human rights and urged its member churches to support the rights of indigenous peoples in their countries.[11]

Repatriation of Objects and Human Remains

An ongoing discussion is the discussion about the repatriation of cultural objects, sometimes sacred objects, which have been taken unjustly by colonising powers and which have found their way to various institutions and museums in mostly western countries. In a number of cases, objects have been returned to the rightful owners but in other cases negotiations have not given results. Also, churches can be involved in such discussions, because of objects brought home by missionaries. It is important to say however, that not all such objects have been taken unjustly. Each case has to be investigated.

An even more sensitive issue is that of human remains taken from people. In Scandinavia there are for example Saami skeletal remains in state institutions. Many of them have been taken from graves. In Sweden, the Saami have demanded those remains to be returned for reburial, but so far with little result. In other cases, negotiations have resulted in that such remains no longer are on public display and can only be studied with permission of the indigenous peoples' representatives themselves. An agreement like this was reached in Norway for the Saami skeletal remains.

Church Life

In many churches the debate is going on about the extent to which indigenous cultural expressions are to be allowed in church life. There is often a fear of syncretism with "pagan" religion, and a lack of understanding of the indigenous culture. Here, still a lot is to be done to

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[11] *Statement on the doctrine of discovery and its enduring impact on Indigenous Peoples*, WCC Executive Committee, 17 Feb. 2012.

make churches aware of the problem – and of the possibilities. Also, practical problems and lack of resources are limiting the possibilities of indigenous people to express their faith in their own language and their own way. The right of indigenous peoples to develop their own culture and to use their own language is however also valid in the church.

Historical violations of indigenous rights and abuses by churches have in a number of cases led to infected relationships between indigenous peoples and churches. Here, the necessity of reconciliation processes has been debated and in a number of churches necessary steps have been taken.

Indigenous Theology

There are many theological aspects on the situation of indigenous peoples. Of course, there are a number of general considerations on the mission of the Church to help and take care of those who are treated unjustly, persecuted, or discriminated. This, regardless of whether people suffer discrimination or injustice because of ethnicity or of any other reason. I will not go into those more general aspects here. Rather, I would look upon some aspects which more specifically have to do with indigenous peoples.

As we have seen, the single most important issue for indigenous peoples in many countries is the right to natural resources and to traditional lands. Very often, those are also the basis of the whole culture. The articles on those rights are also the main hinderance for many countries, among them Sweden, for ratifying ILO Convention 169.

The view on land in Western culture, which has become internationally dominant, is very different from the view on land in most indigenous cultures. Western culture sees land as an asset which can be used, bought, or sold. This view could develop in a culture where production and economic growth became more and more important.

Theology in the West has supported this view, referring to texts like Gen 1:28 "Fill the earth and subdue it". It is this view which lies at the basis for most countries' legislation on land issues. After many centuries, a new interest for creation theology and the notion of stewardship has been lifted up only quite recently.[12]

Many indigenous people have quite another relationship to land. Land does not have to be owned, it can be used. The land is not ours, but we are to steward it and to use it in a sustainable and responsible way. Very often the land and its inhabitants (animals, plants) are considered to be sacred and a gift of the Creator. Humans, being part of creation, can make use of the land and its natural resources for a living, but this does not mean it can be exploited in order to make profit. There is to be respect for all of creation. Saami, Native Americans, Aboriginals, many peoples in Asia, Russia, South America and other places live in a sacred landscape where special places witness om meetings with the Creator.[13] The sacred mountains of many peoples, such as Atoklippie in the Saami land, the sacred places marked by special stones or ornaments are not so different from what we see in the Old Testament. Even there, people met God on a mountain (Abraham, Moses, Eliah).[14] Even there, places where people met God in a special way were marked with for example stones (Jacob at Bethel)[15] and Jesus went often up on a mountain to pray to his Father.[16]

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[12] For an important trigger, see Jürgen Moltmann, *God in Creation: An Ecological Doctrine of Creation: the Gifford Lectures 1984-1985*. London: SCM, 1985.

[13] See, e.g., Vine Deloria, *God is Red: A Native View of Religion*, 3rd ed. Golden, Co.: Fulcrum, 2003, chapter 16.

[14] Gen 22, Ex 19, 1 Kings 19.

[15] Gen 28:18.

[16] Concerning theological aspects of land issues, see Gerard F. Willemsen, "Teologi på vandring – om Gud, folket och landet". *Tro och Liv* 4 (2009) 53-62; Gerard Willemsen, *Gud i Sápmi: Teologiska funderingar i samisk perspektiv*. Stockholm: Vulkan, 2009.

Indigenous peoples also experience a sacred bond to their land. It is not easy to leave and move to another land. The land is something which God has given to the people. This notion is strongly present in the Old Testament, where God has given the promised land to the people of Israel. It is also present in Paul's speech at the Areopagos: "God marked out their appointed times in history and the boundaries of their lands".[17] The story about Naboth's vineyard illustrates these clashing views on land. For king Ahab land is just a resource, an investment and from his point of view he offered a good deal to Naboth. But for Naboth it is unthinkable to leave the land of his ancestors. Of course, as in many cases, the king and the state takes what he wants anyway.[18] The time of Ahab and Eliah was a time when a traditional view on land and its relation to the people and to God, rooted in a more nomadic society, was confronted by a newer set of ideas, belonging to a more urban type of society where land is just an asset and God is confined to certain places and situations.

Walter Brueggemann has in his book *The Land* explored the way people relate to land and develops a theology of the land. He looks at Israel in the different stages of its development and how the people related to the land. He also explores the modern (western) view on land. He concludes that a sense of belonging to a certain place is very important for us. "It is now clear that a sense of place is a human hunger which the urban promise has not met. And a fresh look at the Bible suggests that a sense of place is a primary category of faith".[19] The way indigenous peoples look upon land reminds very much of what Brueggemann

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[17] Acts 17:26. This text can by the way not be used to exclude migrants from our countries. The Bible commands great generosity towards migrants, see, e.g., Lev 19:33-34.

[18] 1 Kings 21:1-15.

[19] Walter Brueggeman, *The Land: Place as Gift, Promise and Challenge in Biblical Faith*. Minneapolis: Fortress Press, 1977/2002, 4.

describes for Israel in the period before the Kingdom. The land is a place of memories, of continuity and of encounters with God.
As a Saami poet wrote:

> On each slope our forefathers have made fire
> on each stone they have trodden
> here they have lived and died.[20]

The indigenous bishop Mark MacDonald from Canada wrote: "The rule of God recognizes a vital and sacred bond of earth, language and culture".[21]

Thus, there is a strong theological motivation to understand and support indigenous peoples in their struggle to remain to live in their traditional lands and to respect their view of the sacred landscape. Not only from a perspective of justice and international indigenous rights, but also from a perspective of a biblical view on land and natural resources.

International Legal Tools

There are a number of international conventions and agreements which are relevant to the rights of indigenous peoples. Important actors internationally are the UN Permanent Forum on Indigenous Issues (UNPFII) and the UN Special Rapporteur on the Rights of Indigenous Peoples.

UNPFII[22] was established in 2000 and had its first annual meeting in 2002. In those meetings, around 1000 representatives of indigenous peoples discuss issues which are important for and impact on indigenous peoples. The outcome becomes an input in the UN system via a number

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[20] Nils-Aslak Valkeapää, *Trekways of the Wind*. DAT, 1994.

[21] Mark MacDonald, "The Church and the Peoples of the Land". *First Peoples Theology Journal* 1 (2000) 13.

[22] *United Nations Permanent Forum on Indigenous Issues.* https://www.un.org/development/desa/indigenouspeoples/ [accessed 15 Feb. 2016].

of recommendations to UN agencies. The Special Rapporteur, appointed in 2001 by the UN Commission on Human Rights, reports annually on the situation of indigenous peoples and makes visits to investigate the situation in different countries.[23] The Rapporteur also addresses violations of indigenous peoples' rights. Anyone can take the initiative to send information to the Special Rapporteur on any specific cases of violations of rights.[24]

The most important conventions and agreements are the following:

ILO Convention 169 is legally binding for the countries which have signed and ratified it. It regulates the relationship between a state and the indigenous peoples within its borders. As we saw already, the ILO Convention 169 gives a definition of indigenous and tribal peoples, but highlights the principle of self-identification as governing. Central is the principle of self-determination (the right of the people to decide over their own priorities as it comes to their social, cultural and economic development).

It deals with education, health and safety, protection of basic human rights, land rights and rights to natural resources in their traditional lands. Possession of traditional lands as well as the right to use lands that they do not possess exclusively but have traditionally used should be guaranteed. When it comes to the exploitation of lands and natural resources, including mineral resources, this is only possible if the principle of free, prior and informed consent is respected. This means that the indigenous people affected shall be included in the whole process of decision making from the very beginning.

Especially the regulations about land have apparently made it difficult for states to ratify the ILO Convention 169. In January 2016 it is only ratified by 22 countries, the first being Norway in 1990 and the last being

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[23] Reports can be found at http://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/SRIPeoplesIndex.aspx [accessed 15 Feb. 2016].

[24] Email indigenous@ohchr.org

Nicaragua and the Central African Republic in 2010. Important countries with large indigenous populations, such as the United States, Russia, India, China, Australia, New Zealand have not yet ratified it, neither have Sweden or Finland.

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007, also stresses the right of self-determination for indigenous people, while at the same time having the right to exercise their rights as citizens of the country they live in.[25] Even here the right to use and develop the own culture, language and traditions are guaranteed, as well as the right to use and own traditional lands. Or, in case lands have unrightfully been taken from them, the right to receive compensation. Also here, the principle of free, prior and informed consent is highlighted. This means that in case of any actions which influence the life of the indigenous peoples they should be informed and heard – without any undue pressure – before any decisions are made. The UNDRIP covers most relevant aspects for the indigenous peoples, but the document is not legally binding. Nevertheless, it is a compelling document. Initially, the United States, Canada, Australia, and New Zealand voted against the UNDRIP (with eleven other countries abstaining from voting). However, all four countries have now changed their attitude and expressed their official support of UNDRIP.

It is also important to highlight the Council of Europe Framework Convention for the Protection of National Minorities, 1995.[26] Though "national minorities" is a broader concept than indigenous peoples this Convention is still relevant even for indigenous peoples. There is no clear definition of national minorities, but for example Finns in Sweden are

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[25] *United Nations Declaration on the Rights of Indigenous Peoples.* https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html [accessed 15 Feb. 2016].

[26] *Council of Europe Framework Convention for the Protection of National Minorities.* http://www.coe.int/en/web/minorities/home [accessed 15 Feb. 2016].

considered a national minority. They are however by no means an indigenous people. On the other hand, are indigenous peoples in most cases also minorities. This Convention is legally binding for the 39 European countries which have ratified it. Four more have signed it only and four more have not even signed it.

The Convention guarantees equality before the law. The state is held to set conditions for national minorities to be able to develop their own culture, religion and language. It compels states to promote education in the own language, to recognise the right to set up their own educational institutions and to make it possible to use the own language in public and under certain conditions in contacts with official authorities.

Good Practice

In its statement on the Doctrine of Discovery, the WCC has not only denounced that doctrine, but it also calls upon its member churches

> to reflect upon its own national and church history and to encourage all member parishes and congregations to seek a greater understanding of the issues facing Indigenous Peoples, to support Indigenous Peoples in their ongoing efforts to exercise their inherent sovereignty and fundamental human rights, to continue to raise awareness about the issues facing Indigenous Peoples and to develop advocacy campaigns to support the rights, aspirations and needs of Indigenous Peoples.[27]

Churches which want to take action need to look into their own history, both concerning indigenous people in their own context and in overseas mission. Historical errors and abuses should be recognised. When appropriate, some form of reconciliation process should be started. It has

[27] *Statement on the doctrine of discovery and its enduring impact on Indigenous Peoples*, WCC Executive Committee, 17 Feb. 2012 § 7E.

been pointed out from the side of the Saami that apologising and reconciliation is very good, but that this also must lead to a change. Reconciliation should be the starting point, leading to changes in power structures, openness to indigenous cultural expressions in church life but also support in human rights issues. The Lutheran churches in both Norway and Sweden have had reconciliation processes. They have also created bodies to promote Saami church life. The Church of Sweden has been investigating its own history with respect to the Saami and publishes a so-called white book which is an important step.[28]

As pointed out above, a number of churches in the world have denounced the Doctrine of Discovery. In Europe, those are the United Methodist Church and Uniting Church in Sweden. UCS has also actively supported the rights of indigenous peoples – both the Saami struggle against exploitation of their lands, the demand to repatriate skeletal remains stolen from them but also by giving input to the Universal Periodic Review of the UN. UCS also supports the struggles of indigenous peoples for their rights together with partner churches in other countries. Such as the struggle against land grabbing in Nicaragua, where we as European church can use the available international channels to highlight the problems as well as support the national church in the country in their work against this practice. The legal framework in the country is good but people do not always know how to act in relation to authorities.

Another example of good practice is the Mission Covenant Church in Norway. They have noted the difficult situation of the Batwa people in the Republic Congo, one of their traditional mission fields. The Batwa live in very remote areas in the forests and suffer a lot of discrimination

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[28] On the reconciliation processes in Sweden, see Gerard F. Willemsen, "The Road of Reconciliation in Sweden: Meeting the Sámi in Their Own Culture". *Journal of North American Institute for Indigenous Theological Studies* 5 (2007) 19-28.

by other people. Currently the Norwegians are working on a project, together with the Evangelical Church of Congo, to strengthen the human rights situation of the Batwa and to work against discrimination.

Churches in Estonia together with Sweden have worked with indigenous peoples in Russia, strengthening their own cultural expressions in church life. Here, the Estonian experience of being a minority under Soviet rule has proved very helpful.

Proposal for Action

The following courses of action can be proposed for churches, according to their own situations and possibilities.

1. Take note of the statement on Doctrine of Discovery from the WCC and follow the recommendations made in that statement. This does not only imply denouncing the Doctrine – an important symbolic action – but also the recommendations to support indigenous peoples in their causes.

2. Be informed about the situation of indigenous peoples and national minorities in the country as well as be aware of the historical role of the church. Support the indigenous people in their struggle for the development of their own culture and language, where necessary do advocacy for the rights of the indigenous people towards official institutions and local and national governments. Of course, set a good example by giving room for indigenous people to express their faith through their own language and cultural expressions and see to it that the indigenous people in the church have influence on the life of the church on all levels. Sometimes there can be good policies on the national level, but conflicts on the local level. In such cases it is important to do formation towards local congregations on the issues and the rights of indigenous peoples. See to it that indigenous people are taken on board on all discussions affecting them, for example on climate change.

3. Be informed about the situation of indigenous peoples in countries and churches where the church has international cooperation. Help partner churches to work on those issues and help them to be informed on indigenous peoples' rights. Work on advocacy through both national and international bodies for the rights of indigenous peoples, wherever possible in cooperation with the partner church in the country at stake. European churches can have good possibilities also to influence companies and organisations that are affecting the situation of indigenous peoples in third countries. See to it that the indigenous perspective is taken into account in all aspects of international cooperation and development work.

4. Work on the development of relevant theology and see to it that indigenous theology is taught in formation programs as well as in theological and mission education of the church. The relation between human rights and theology needs to be an important aspect in this education.

5. At an international level, organisations like CEC can play a role in both advocacy and in stimulating member churches to be aware of indigenous issues. The exchange of good practices as well as of challenges between member churches can be an important role[29].

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[29] For further reading, see, e.g., Walter Brueggeman, *The Land: Place as Gift, Promise and Challenge in Biblical Faith*. Minneapolis: Fortress Press, 1977/2002; Vine Deloria, *God is Red: A Native View of Religion*. 3rd ed. Golden, Co.: Fulcrum, 2003; Dewi Hughes, *Castrating culture, A Christian Perspective on Ethnic Identity from the Margins*. Carlisle: Paternoster Publishing, 2001; Mark MacDonald, "The Church and the Peoples of the Land". *First Peoples Theology Journal* 1 (2000) 11-15; Nils-Aslak Valkeapää, *Trekways of the Wind*. Kautokeino: DAT, 1994; Gerard F. Willemsen, "The Road of Reconciliation in Sweden: Meeting the Sámi in Their Own Culture". *Journal of North American Institute for Indigenous Theological Studies* 5 (2007) 19-28; Gerard F. Willemsen, "Teologi på vandring – om Gud, folket och landet". *Tro och Liv* 4 (2009) 53-62

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